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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-89-063]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 916 and 917 (California nectarines, plums and peaches) for the 1989–90 fiscal year which began March 1, 1989. The action is needed for the Nectarine Administrative Committee, and the Plum and Peach Commodity Committees established under these orders to incur operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: Sections 916.227, 917.250, and 917.251 are effective for the period March 1, 1989 through February 28, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 [7 CFR Part 916] regulating the handling of nectarines grown in California and 917 [7 CFR Part 917] regulating the handling of fresh pears, plums, and peaches grown in California.

These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of California plums, peaches and nectarines subject to regulation under these marketing orders [7 CFR Parts 916 and 917], and there are approximately 2,030 producers of these commodities in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000. Small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the committees are primarily handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services and personnel in their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expected so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee met May 3, 1989, and unanimously recommended 1989–90 marketing order expenditures of $3,515,037 and an assessment rate of $0.185 per 25-pound package or equivalent. For comparison, 1988–89 fiscal year actual expenditures were $2,787,093 and the assessment rate was $0.18 cents per package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: salaries and employee benefits, $193,191 ($177,712); consultant fees, $45,000 ($53,179); production research, $86,587 ($87,403); market development and promotion, $2,076,100 ($1,494,762); and inspection, $907,500 ($871,209). With the exception of $65,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Estimated total income for 1989–90 of $3,824,490 includes projected assessment income of approximately $3,101,155 based on anticipated shipments of 16,763,000 packages of fresh nectarines, carryover income from 1987–88 of $620,085, anticipated income from export development and research subsidies from state and federal agencies of $70,250 and interest income totalling $33,000. This income will cover anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee operating reserves are within the limits authorized under the program.

The Plum Commodity Committee met May 3, 1989, and unanimously recommended 1989–90 marketing order expenditures of $3,154,353 and an assessment rate of $0.21 per 28-pound

package or equivalent. For comparison, 1988–89 fiscal year expenditures were $3,090,693 and the assessment rate was $0.19 per 28-pound package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: salaries and employee benefits, $193,190 ($168,713); consultant fees, $5,000 (nothing budgeted); production research, $67,091, ($77,302); market development and promotion, $1,749,663 ($1,679,526); and inspection, $1,078,000 ($1,038,355). With the exception of $85,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Total income for 1989–90 would amount to $3,402,340, including projected assessment income of $2,969,190 based on shipments of 14,139,000 packages of fresh plums at $0.21 per 28-pound package or equivalent. Assessment income would be supplemented with unexpended 1988–89 funds ($311,650), interest income ($20,000) and export subsidies ($101,500) from state and federal agencies. This income will cover the anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee reserves are within limits authorized under the program.

The Peach Commodity Committee met May 4, 1989, and unanimously recommended 1989–90 marketing order expenditures of $2,849,419 and an assessment rate of $0.185 cents per 25-pound package or equivalent. For comparison, 1988–89 fiscal year expenditures were $2,269,778 and the assessment rate was $0.18 per 25-pound package or equivalent. Major expenditure categories projected for 1989–90 with actual 1988–89 expenditures in parenthesis are: salaries and employee benefits, $182,282 ($159,261); consultant fees, $5,000 (nothing budgeted); production research, $61,087 ($61,902); market development and promotion, $1,546,700 ($1,073,846); and inspection, $864,000 ($863,223). With the exception of $50,000 budgeted for uncollected assessment accounts, the remaining expenses are for program administration.

Total income for 1989–90 would amount to $3,218,650, including projected assessment income of approximately $2,572,240, based on shipments of 13,904,000 packages of fresh peaches at $0.185 per 25-pound package or equivalent. Assessment income would be supplemented with unexpended 1988–89 funds ($564,660), interest income ($24,000) and export subsidies ($57,750) from state and federal agencies. This income will cover the anticipated expenditures for 1989–90 and provide an adequate carryover to meet authorized committee expenses until 1990–91 assessment funds are collected. Committee reserves are within limits authorized under the program.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new §§ 916.227, 917.250, and 917.251 and is based on the Committees' recommendations and other information. A proposed rule concerning this action was published in the **Federal Register** [54 FR 26382, June 23, 1989]. Comments on the proposed rule were invited from interested person until July 3, 1989. No comments were received.

After consideration of all relevant matter presented, including the Committees' recommendations, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. In addition, handlers are aware of these actions which were recommended at public meetings. Therefore, it is found that good cause exists for not postponing the effective dates of these actions until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, Nectarines, Plums, Peaches and pears, California.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

Note. These sections will not appear in the annual Code of Federal Regulations.

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.227 is added to read as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.227 Expenses and assessment rate.

Expenses of $3,515,037 by the Nectarine Administrative Committee are authorized, and an assesssment of $0.185 per 25-pound package or equivalent of assessable nectarines is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. A new § 917.250 is added to read as follows:

§ 917.250 Expenses and assessment rate.

Expenses of $3,154,353 by the Plum Commodity Committee are authorized, and an assessment of $0.21 per 28-pound package or equivalent of assessable plums is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

4. A new § 917.251 is added to read as follows:

§ 917.251 Expenses and assessment rate.

Expenses of $2,849,419 by the Peach Commodity Committee are authorized, and an assessment of $0.185 per 25-pound package or equivalent of assessable peaches is established for the fiscal period ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17056 Filed 7–19–89; 8:45am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1446

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops (Amdt. 3)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with one clarifying amendment, an interim rule published in the **Federal Register** on September 15, 1988, 53 FR 35984, which amended regulations set out in 7 CFR Part 1446 for the peanut program.

However, by a spearate notice published elsewhere in this issue of the **Federal Register**, an amendment to § 1446.138, with respect to the 1989 and 1990 crops, will be proposed to modify the "shrink" allowance for handlers choosing nonphysical supervision for the 1989 and 1990 crop years.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule published on September 15, 1988 (53 FR 35984), made a number of changes in 7 CFR Part 1446. Eleven comments were received. The respondents were shellers, sheller organizations, and a grower organization. No adverse comments were received concerning the provisions of the interim rule regarding: (1) The incorporation of the foreign person eligibility provisions of 7 CFR Part 1498; (2) the change in the definition of "Segregation 1" peanuts and in the provisions in the regulations covering the maximum acceptable moisture level for peanuts pledged as collateral for a price support loan; (3) changes in the price support pool accounting provisions; (4) changes in the sound mature kernel (SMK) and sound split (SS) kernel qualifying standards for contract additional Virginia-type peanuts; and (5) adjustments in the letter of credit provisions for handlers choosing nonphysical supervision.

Shrink. Several handlers objected that the "shrink" allowance for nonphysical supervision is too low and causes inappropriate costs to be incurred by peanut handlers who choose that method of supervision. Some of the handlers submitted data to indicate that the shrink allowance for nonphysical supervision handlers should be higher than 2.0 percent because the Peanut Administrative Committee (PAC) standards effectively limit options that could facilitate a nonphysical supervision handler's ability to meet the handler's disposition requirements with respect to contract additional peanuts.

As indicated below, it will be proposed for the 1989 and subsequent crop years that the shrink allowance for nonphysical supervision be increased. However the 2.0 percent shrink adjustment in § 1446.138 was in effect for the greater portion of the time of marketing the 1988 crop. A retroactive increase in the shrink adjustment for the 1988 crop would create considerable administrative burdens and could create economic advantages for some handlers. Based on these considerations, the potential effect on producers and CCC of increasing the allowance, and the need for further comment, it has been determined, for the 1988 crop, that the "shrink" for nonphysical supervision handlers shall remain 2.0 percent of the total kernel content (TKC) poundage which is obtained for the crop year by the handler as contract additional peanuts; provided, that the handler complies with such restrictions on use as the Executive Vice President, CCC, may impose as a condition for the 2.0 percent allowance, to take into account common industry practice. Section 1446.138 has, however, been reorganized for the purpose of clarity.

Based on the comments, it has been determined that an increase in the shrink allowance could possibly be warranted for future crop years for handlers choosing nonphysical supervision. Before any increase is implemented, a proposed rule will be issued to further address this issue and to seek comments on a proposed increase. Accordingly, CCC will, concurrently, propose an increased shrink allowance for the 1989 and 1990 crops for such handlers.

Marketing cards. Several handlers suggested that in some cases producer marketing cards should be adjusted to show eligibility to market contract additional peanuts before the contracts are approved by the Secretary. This would not be consistent with the statutory requirement that the Secretary approve all such contracts for private sale of additional peanuts. Accordingly, this suggestion has not been adopted.

One respondent suggested that handlers should not be responsible for determining the producer's eligibility for a price support loan when peanuts are presented for such a loan at the participating handler's place of business. It is planned that ineligibility for benefits due to the "foreign person"provisions of 7 CFR Part 1446 and ineligibility due to those provisions in Part 1446 dealing with the conservation compliance provisions of 7 CFR Part 12 ("sodbuster" and "swampbuster" restrictions) will be shown on the marketing card. This refinement of agency practice does not require a change in the program regulations. Handlers will, however, continue to have the responsibility for checking other matters such as whether there are liens outstanding against the peanuts.

Other issues. One respondent suggested that the "buyback" policy for Segregation 3 peanuts be codified in the regulations rather than set out in the storage contracts signed by handlers who handle peanuts pledged for collateral for a price support loan. Because all handlers have direct notice of the policy and the peanuts involved are in CCC's inventory, this suggestion has not been adopted.

One respondent supported changing the Segregation 1 definition, as provided in the interim rule, only if buybacks of Segregation 2 and Segregation 3 peanuts continue to be handled in the current manner. There are no plans to change the rules with respect to buybacks.

Some respondents objected that in several instances the regulations in Part

1446 allow for individual determinations to be made by the Executive Vice President, CCC. The Executive Vice President, CCC is not authorized to make determinations in contradiction of provisions of the regulations. Once regulations have been adopted, the Executive Vice Pesident has the authority to make any determinations and issue procedures to carry out the provisions of the regulations. That authority is needed to account for individual circumstances and changed circumstances in this complex program and is essential for the effective operation of the peanut price support program.

One respondent asked that handlers be permitted to move farmer stock peanuts with excess loose shelled kernels (LSK's) in the manner permitted under the PAC Maraketing Agreement. Part 1446, at this time, does not prohibit such movement.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

Final Rule

Accordingly, the interim rule amending 7 CFR Part 1446 which was published at 53 FR 35984 is hereby adopted as a final rule with the following change.

PART 1446—PEANUTS

1. The authority citation for Subpart—Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops continues to read as follows:

Authority: 7 U.S.C. 1359, 1375, 1421 *et seq.*; 15 U.S.C. 714 *et seq.*

2. Section 1446.138 is revised to read as follows:

§ 1446.138 Storage requirements under nonphysical supervision.

(a) *Basic shrinkage allowance.* For handlers operating under nonphysical supervision, contract additional peanuts placed in commingled storage must be accounted for on TKC basis less a one time adjustment for shrinkage for each crop and for all peanut types equal to one half of one percent (0.5 percent) of the total kernel content of the poundage obtained as contract additional peanuts, except as otherwise provided in this section for the 1988 or subsequent crop years.

(b) *Increased shrinkage allowance for the 1988 crop and subsequent crops.* Notwithstanding the provisions of paragraph (a) of this section, for handlers operating under nonphysical supervision who certify compliance with, and in fact comply with, such additional restrictions on use of various qualities of peanuts as may be specified by the Executive Vice President, CCC, to take into account common industry practices, the shrinkage allowance with respect to the 1988 crop and subsequent crops of peanuts will be 2.0 percent of the TKC of poundage obtained by the handler as contract additional peanuts.

Signed at Washington, DC on July 14, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-16977 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 211 and 216

[INS Number 1134-89]

RIN 1115-AB18

Documentary Requirements; Immigrants; Waivers: Conditional Basis of Lawful Permanent Resident Status for Certain Alien Spouses and Sons and Daughters

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rulemaking allows individuals who are outside the United States to file either a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status or an Application for Waiver of Requirement to File Joint Petition to Remove Conditional Basis of Status. It also clarifies the regulation relating to travel outside the United States while the petition or application is pending. It is necessary in order to prevent undue hardship to those individuals who have legitimate reasons for travelling outside the United States. It will facilitate international travel by conditional permanent residents for business, tourism and other purposes.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, Room 7122, 425 Eye Street NW., Washington, DC 20536, Telephone (202) 633-3240.

SUPPLEMENTARY INFORMATION: Federal regulations at 8 CFR 211.1(b)(1) provide that an alien who has been admitted to the United States as a conditional permanent resident may present an Alien Registration Receipt Card in lieu of an Immigrant visa if he or she is returning after a temporary absence not exceeding one year (or as a crewman under certain circumstances) to an unrelinquished lawful permanent residence prior to the second anniversary of the date on which he obtained permanent residence. The regulation also provides that once the alien has filed either a Joint Petition to Remove the Conditional Basis of Alien's Permanent Status (Form I-751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) he or she shall be allowed to present that Alien Registration Receipt Card in combination with a receipt for filing the Form I-751 or I-752 in lieu of an immigrant visa for a period of up to six months after such filing. This provision is made because the statute allows the Service up to 180 days to adjudicate the petition (up to 90 days to conduct an interview and an additional 90 days thereafter to make a final adjudication). Since the petitioners may file Form I-751 at any time within the 90 days immediately preceding the second anniversary of the date on which the alien became a conditional permanent resident, many aliens will not receive a decision on their petitions until well after the second anniversary.

The regulation therefore facilitates international travel while the petition is pending before the Service. This rulemaking provides that the six month continuation period begins with the filing of the petition or application, and not with the second anniversary of the date of residence, so that the continuation period and the statutory time limit on the adjudication of the petition will coincide.

Furthermore, the rulemaking removes the requirement that the alien be physically present within the United States at the time of filing the joint petition. Presently, only those aliens who are outside the United States pursuant to official U.S. government travel orders (either civilian or military) are allowed to file from outside the country. However, upon further examination, it has been determined that the requirement is extremely difficult to police (since petitioners outside the United States could simply forward the petition to an associate in the United States for mailing) and that the requirement does not significantly reduce the probability of fraud. Also, the requirement causes undue hardship to petitioners with a bona fide marriage who are temporarily outside the United States. The rulemaking, therefore,

removes the requirement for the physical presence at time of filing. However, the rulemaking also clearly states that it is the responsibility of the petitioners to ensure that they, their dependent children and any witnesses that they wish to present are made available for an interview at the Service office in the United States having jurisdiction over this case.

The Service received no responses from interested parties to its February 24, 1989 proposed rulemaking. Therefore, the final rulemaking is being published as proposed, without modifications.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget in accordance with provision of the Paperwork Reduction Act and are cited under 8 CFR 299.5.

List of Subjects

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as set forth below:

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

1. The authority citation for Part 211 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

2. In § 211.1 paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(1) *Alien Registration Receipt Card (Form I–151 or I–551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, in returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, or within six months of the date of filing a Joint Petition to Remove the Conditional Basis of Aliens Permanent Resident Status (Form I–751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752) pursuant to Part 216 of this chapter if the alien is in possession of a Service-issued receipt for such filing, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving abroad an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien traveling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional resident may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

3. The authority citation for Part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1136a.

§ 216.4 [Amended]

4. In § 216.4, paragraph (a)(4) is revised to read as follows:

(a) * * *

(4) *Physical presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and dependent children, to comply with the interview requirements contained in the Act. Furthermore, if the documentation submitted in support of the petition includes affidavits of third parties having knowledge of the bona fides of the marital relationship, the petitioner must arrange for the affiants to be present at the interview, at no expense to the government. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

* * * * *

Dated: July 5, 1989.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 89–17040 Filed 7–19–89; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 299

[INS Number: 1045–89]

RIN 1115–AA54

Immigration and Nationality Forms; Display of Control Numbers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule updates the listing of forms contained in 8 CFR 299.1 and 299.5 by consolidating the Forms I–20A–B and I–20ID, and revising the edition date for Form I–538. This revision is necessary to ensure that the Immigration and Naturalization Service (INS) uses and accepts only the current editions of forms listed in §§ 299.1 and 299.5 of this chapter. Periodic updates will be made to these sections as required.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Pearl B. Chang, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW.,

Washington, DC 20536. Telephone: (202) 633-3240.

SUPPLEMENTARY INFORMATION: Section 299.1 lists the prescribed forms to be used in compliance with subchapters A, B, and C of this chapter. This revision is necessary to ensure that the forms listings remain current. Section 299.5 is updated to maintain the centralized listing of current public use forms and their respective control numbers as issued by the Office of Management and Budget (OMB).

The Immigration and Naturalization Service recently consolidated the Forms I-20A-B and I-20ID under one form number (I-20A-B/I-20ID), and also revised the Form I-538. To give the public sufficent notice to obtain the revised versions of these forms, INS will continue to accept the old and new versions of the forms until October 15, 1989. Beginning on October 16, 1989, INS will only accept the version of the Forms I-20A-B/I-20ID and I-538, that is listed in § 299.1.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule provides an up-to-date listing of approved Immigration and Nationality Forms to be used and accepted by the Immigration and Naturalization Service.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not a major rule within the meaning of section 1(B) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment Analysis in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Part 299 of Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 299—IMMIGRATION FORMS

1. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

2. Section 299.1 is amended by removing the Form I-20ID from the listing, and revising the entries for Form I-20A-B, and Form I-538 to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I-20A-B/I-20ID (4-27-88)—Certificate of Eligibility of Nonimmigrant (F-1) Student Status—For Academic and Language Students.

* * * * *

I-538 (1-19-89)—Application by Nonimmigrant Student for Extension of Stay, School Transfer, or Permission to Accept or Continue Employment.

* * * * *

3. Section 299.5 is amended by removing the Form I-20ID from the listing, and revising the entry for Form I-20AB to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* *	* *	*
I-20A-B/I-20ID	Certificate of Eligibility of Nonimmigrant (F-1) Student Status—For Academic and Language Students.	1115-0051

* * * * *

Dated: June 26, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-17039 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM88-25-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 14, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity applicable to rate filings made during the period August 1, 1989 through October 31, 1989. This benchmark rate is set at 12.43 percent.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Notice of Benchmark Rate of Return on Common Equity for Public Utilities

Issued July 14, 1989.

On December 19, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 510) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its Regulations.[2] In Order No. 510, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1989 and that 0.03 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period August 1, 1989 through October 31, 1989 is 12.43 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 98 utilities.[3] The

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 510, 53 FR 51,752 (Dec. 23, 1988), 45 FERC ¶ 61,452 (Dec. 19, 1988).

[2] 18 CFR 37.9 (1988). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

[3] As a result of the acquisition of Utah Power and Light by PacifiCorp, the Commission has reduced the number of companies in the sample to 98. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

One utility, Middle South Utilities, changed its name to Entergy Corp. on May 19, 1989.

average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.33$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the first and second quarters of 1989 are 8.04 and 7.83 percent, respectively. The average yield for those two quarters is 7.94 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.43 percent.

This notice supplements the generic rate of return rule announced in Order No. 510, issued December 19, 1988 and effective on February 1, 1989.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective August 1, 1989.

Richard P. O'Neill,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period(t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (K_t)	Benchmark rate of return
2/1/86 to 4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86 to 7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86 to 10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86 to 1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87 to 4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87 to 7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87 to 10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87 to 1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88 to 4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88 to 7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88 to 10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88 to 1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89 to 4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89 to 7/31/89	1.02	4.33	7.95	12.44	12.44
8/1/89 to 10/31/89	1.02	4.33	7.94	12.43	12.43

Note: The Appendix will not be published in Code of Federal Regulations.

APPENDIX

Exhibit No.	Title
1	Initial sample of utilities.
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters.
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample.

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Servic	CIP	4931
Central Louisiana Electri	CHL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Ligh	FGE	4931

EXHIBIT 1.—SAMPLE OF UTILITIES—Continued

Utility	Ticker symbol	Industry code
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
Ipalco Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Neco Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker symbol	Industry code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp	CSR	4911
Central Hudson Gas & Elec	CNH	4931
Central Ill Public Servic	CIP	4931
Central Louisiana Electri	CHL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste	CES	4931
Consolidated Edison of NY	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
Duke Power Co	DUK	4911
Duquesne Light Co	DQU	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Ligh	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa Resources Inc	IOR	4911
Iowa-Illinois Gas & Elec	IWG	4931
Ipalco Enterprises Inc	IPL	4911
Kansas City Power & Light	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
Long Island Lighting	LIL	4931
Louisville Gas & Electric	LOU	4931
Maine Public Service	MAP	4911
Midwest Energy Co	MWE	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Neco Enterprises Inc	NPT	4911
Nevada Power Co	NVP	4911
New England Electric Syst	NES	4911
New York State Elec & Gas	NGE	4931
Niagara Mohawk Power	NMK	4931
Nipsco Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utiliti	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Ligh	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital Cor	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Holdings Inc	PIN	4911
Public Service Co of Colo	PSR	4931
Public Service Co of N H	PNH	4911
Public Service Co of N ME	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
SCANA Corp	SCG	4931
SCECORP	SCE	4911
Sierra Pacific Resources	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & El	SIG	4931
St Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co	TEP	4911
Union Electric Co	UEP	4911
United Illuminating Co	UIL	4911
Unitil Corp	UTL	4911
Utilicorp United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N=98.

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Year=89 Quarter=2

Ticker symbol	Utility	Reason for exclusion
CMS	CMS Energy Corp.	Dividend rate was zero for quarter calendar 89Q2.
ETR	Entergy Corp	Dividend rate was zero for quarter calendar 88Q3.
GSU	Gulf States Utilities Co.	Dividend rate was zero for quarter calendar 89Q2.
IPC	Illinois Power Co.	Dividend rate was zero for quarter calendar 89Q2.
LIL	Long Island Lighting.	Dividend rate was zero for quarter calendar 89Q2.
PCG	Pacific Gas & Electric.	Dividend rate was zero for quarter calendar 88Q3.
PNW	Pinnacle West Capital Cor.	Dividend rate was zero for quarter calendar 89Q1.
PIN	PSI Holdings Inc.	Dividend rate was zero for quarter calendar 88Q4.
PNH	Public Service Co of N H.	Dividend rate was zero for quarter calendar 89Q2.
PNM	Public Service Co of N ME.	Dividend rate was zero for quarter calendar 89Q2.

N=10.

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

Year=89 Quarter=2

Ticker symbol	Price, 1st month of qtr-high	Price, 1st month of qtr-low	Price, 2nd month of qtr-high	Price, 2nd month of qtr-low	Price, 3rd month of qtr-high	Price, 3rd month of qtr-low	Average price	Dividends annual rate	Annualized dividend yield
AEP	27.000	26.000	28.125	25.750	28.375	27.375	27.104	2.370	8.744
ATE	33.000	32.500	34.875	32.500	36.000	34.500	33.896	2.880	8.497
AYP	36.500	35.750	38.125	36.125	38.500	36.750	36.958	3.080	8.334
BGE	30.875	29.000	32.375	30.000	32.500	30.250	30.833	2.100	6.811
BKH	26.875	25.375	26.750	25.500	28.500	25.750	26.458	1.520	5.745
BSE	16.500	15.500	16.875	15.875	17.750	16.250	16.458	1.820	11.058
CER	34.500	33.250	35.500	33.625	36.250	34.750	34.646	2.460	7.100
CES	31.875	30.375	33.000	30.625	33.875	32.750	32.083	2.800	8.727
CIN	26.500	25.000	27.000	25.625	27.625	26.500	26.375	2.320	8.796
CIP	21.750	20.375	22.125	21.000	22.875	21.750	21.646	1.800	8.316
CNH	21.375	20.375	22.125	20.875	22.875	22.000	21.604	1.760	8.147
CNL	32.500	31.375	33.000	31.625	33.875	32.875	32.542	2.440	7.498
CPL	36.250	35.125	38.375	36.125	40.500	38.250	37.437	2.840	7.586
CSR	32.500	30.000	34.000	31.375	34.750	33.500	32.687	2.600	7.954
CTP	17.625	16.875	18.250	17.125	18.875	18.000	17.792	1.520	8.543
CV	25.375	23.875	26.500	24.000	27.250	25.500	25.417	1.980	7.790
CWE	34.000	32.625	36.500	33.500	38.125	36.000	35.125	3.000	8.541
CX	16.250	15.625	17.250	15.750	18.250	17.000	16.687	1.600	9.588
D	42.250	40.750	44.750	41.875	44.500	43.375	42.917	3.200	7.456
DEW	17.875	17.125	18.625	17.500	19.375	18.250	18.125	1.500	8.276
DPL	25.625	24.125	25.875	24.375	26.375	25.250	25.271	2.240	8.864
DQU	18.500	17.500	20.000	18.250	20.875	19.375	19.083	1.280	6.707
DTE	19.000	17.625	20.250	18.875	21.375	19.750	19.479	1.680	8.625
DUK	46.750	44.250	49.000	45.000	50.500	47.625	47.187	2.960	6.273
ED	47.250	45.500	50.000	46.250	52.000	49.000	48.333	3.440	7.117
EDE	27.875	26.500	29.125	27.750	29.500	28.625	28.229	2.220	7.864
EUA	33.750	32.000	36.500	33.250	37.500	35.000	34.667	2.500	7.212
FGE	35.000	29.625	34.625	33.250	34.500	33.250	33.375	2.000	5.993
FPC	34.875	33.500	36.375	34.125	36.375	35.125	35.062	2.560	7.301
FPL	30.750	29.000	32.000	30.375	31.375	30.375	30.646	2.280	7.440
GMP	23.750	22.500	24.125	22.750	24.875	23.500	23.583	1.920	8.141
GPU	37.875	36.250	37.875	36.250	40.750	37.375	37.729	1.800	4.771

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

Year=89 Quarter=2

Ticker symbol	Price, 1st month of qtr-high	Price, 1st month of qtr-low	Price, 2nd month of qtr-high	Price, 2nd month of qtr-low	Price, 3rd month of qtr-high	Price, 3rd month of qtr-low	Average price	Dividends annual rate	Annualized dividend yield
HE	30.750	30.000	32.625	30.250	33.875	32.250	31.625	2.040	6.451
HOU	29.375	27.250	30.000	28.000	33.375	29.125	29.521	2.960	10.027
IDA	24.250	23.250	26.000	23.500	26.500	25.375	24.812	1.800	7.254
IEL	23.625	21.625	24.500	23.000	25.750	23.500	23.667	2.040	8.620
IOR	18.375	17.125	19.000	18.000	19.875	18.625	18.500	1.660	8.973
IPL	23.375	22.000	24.375	23.000	25.375	23.875	23.667	1.720	7.268
IPW	22.750	21.625	23.125	22.250	24.250	22.750	22.792	2.000	8.775
IWG	39.625	37.125	39.875	38.250	42.375	39.500	39.458	3.260	8.262
KAN	22.750	21.750	24.125	22.250	23.875	23.125	22.979	1.760	7.659
KGE	20.875	19.625	22.375	20.250	22.875	21.250	21.208	1.600	7.544
KLT	30.250	29.125	31.750	29.750	33.625	31.125	30.937	2.440	7.887
KU	18.875	18.125	19.250	18.500	20.250	19.000	19.000	1.400	7.368
LOU	34.625	32.000	36.500	34.250	38.250	36.375	35.333	2.720	7.698
MAP	24.250	23.500	24.875	22.375	24.625	21.000	23.438	1.600	6.827
MPL	24.250	23.500	25.000	23.500	25.625	24.250	24.354	1.780	7.309
MTP	36.875	34.625	41.750	36.375	42.125	39.625	38.562	2.760	7.157
MWE	18.875	18.000	19.750	18.125	19.875	18.750	18.896	1.600	8.467
NES	24.000	22.500	26.500	23.250	26.375	25.375	24.667	2.040	8.270
NGE	23.875	22.750	25.375	23.375	27.375	24.750	24.583	2.000	8.136
NI	15.500	13.500	16.500	14.875	18.000	16.000	15.729	0.840	5.340
NMK	12.125	11.375	11.875	10.750	12.000	11.125	11.542	1.200	10.397
NPT	18.500	15.875	19.000	17.625	18.875	14.875	17.458	1.500	8.592
NSP	33.500	30.750	35.875	32.375	37.625	35.375	34.250	2.120	6.190
NU	20.250	19.500	21.750	20.000	22.375	21.250	20.854	1.760	8.440
NVP	20.125	19.250	21.000	19.750	22.000	20.750	20.479	1.520	7.422
OEC	20.500	19.875	21.750	20.000	21.750	20.500	20.729	1.960	9.455
OGE	33.375	32.125	34.750	32.875	36.000	34.625	33.958	2.380	7.009
ORU	28.250	27.250	29.125	27.375	30.250	29.000	28.542	2.260	7.918
PE	21.250	19.750	21.875	20.625	22.875	20.750	21.187	2.200	10.383
PEG	24.750	24.125	26.750	24.250	27.500	25.125	25.417	2.040	8.026
PGN	22.625	21.250	24.125	22.125	25.125	23.500	23.125	1.960	8.476
POM	20.500	19.625	22.000	20.250	21.625	20.500	20.750	1.460	7.036
PPL	35.875	34.625	39.000	35.000	39.625	38.375	37.083	2.860	7.712
PPW	37.750	34.625	39.875	36.625	41.500	38.375	38.125	2.640	6.925
PSD	19.000	18.250	19.625	18.500	21.000	19.250	19.271	1.760	9.133
PSR	21.500	20.125	22.250	20.500	23.250	21.750	21.562	2.000	9.275
RGS	17.625	17.000	19.375	17.250	20.875	18.750	18.479	1.500	8.117
SAJ	21.875	21.000	22.500	21.000	22.875	22.125	21.896	1.520	6.942
SCE	32.875	31.250	35.125	32.750	36.250	34.375	33.771	2.560	7.581
SCG	30.875	30.000	33.000	30.250	33.875	32.500	31.750	2.460	7.748
SDO	38.500	37.125	40.500	38.125	41.500	39.375	39.187	2.700	6.890
SIG	28.375	27.500	29.000	27.750	29.750	28.500	28.479	1.800	6.320
SO	24.500	23.125	25.875	23.125	27.125	25.375	24.854	2.140	8.610
SRP	24.000	22.625	23.250	22.375	25.250	23.250	23.458	1.800	7.673
TE	24.000	22.625	25.125	23.250	25.625	24.500	24.187	1.520	6.284
TEP	40.125	32.750	39.125	36.250	39.000	31.125	36.396	3.900	10.716
TNP	20.000	19.000	20.125	19.500	21.000	19.750	19.896	1.550	7.791
TXU	29.375	27.750	31.375	28.000	32.500	29.625	29.771	2.920	9.808
UCU	18.250	17.625	18.375	17.625	19.500	18.125	18.250	1.440	7.890
UEP	24.375	23.750	25.750	24.000	26.500	24.875	24.875	2.000	8.040
UIL	25.875	24.875	28.250	25.125	28.375	26.625	26.521	2.320	8.748
UTL	38.875	34.000	38.375	36.875	37.625	37.125	37.146	2.080	5.600
WEC	27.250	25.625	28.750	26.500	29.875	27.875	27.646	1.660	6.005
WPH	22.500	21.875	24.000	21.875	23.500	22.750	22.750	1.680	7.385
WPS	21.750	20.750	22.750	21.125	23.250	22.375	22.000	1.580	7.182
WWP	27.500	26.125	29.125	27.000	30.000	28.375	28.021	2.480	8.851

N=88.

[FR Doc. 89-17042 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 1119; 108.881]

Denial of Passports to Certain Convicted Drug Traffickers

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is issuing final regulations to implement provisions of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690. The regulations prescribe the conditions governing the issuance, denial or revocation of United States passports to individuals convicted of offenses violating Federal and state drug abuse laws where the individual used a U.S. passport or crossed an international border in committing the offense. The rule also makes technical, non-substantive conforming amendments to existing regulations governing the revocation and denial of passports in other cases.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie Lea-Brown, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326-6213.

SUPPLEMENTARY INFORMATION: The Department of State published an

interim rule regarding the denial of passports to certain convicted drug traffickers on March 1, 1989 (54 FR 8531). No comments were received and the interim rule is adopted as final.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act (5 U.S.C. 301 et seq.), it is hereby certified that the interim rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) apply.

List of Subjects in 22 CFR Part 51

Passports.

For the reasons set forth in the preamble, 22 CFR Part 51 is amended as follows:

PART 51—PASSPORTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: 22 U.S.C. 2658 and 3926; sec. 1, 44 Stat. 887; sec. 1, 41 Stat. 750; sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, as amended, 2658; sec. 122 (d)(3), Pub. L. 98–164, 97 Stat. 1017; E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507; Pub. L. 100–690.

2. Section 51.70 is revised to read as follows:

§ 51.70 Denial of passports

(a) A passport, except for direct return to the United States, shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant is the subject of an outstanding Federal warrant of arrest for a felony, including a warrant issued under the Federal Fugitive Felon Act (18 U.S.C. 1073); or

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

(3) The applicant is subject to a court order committing him or her to a mental institution; or

(4) The applicant is the subject of a request for extradition or provisional arrest for extradition which has been presented to the government of a foreign country; or

(5) The applicant is the subject of a subpoena issued pursuant to section 1783 of Title 28, United States Code, in a matter involving Federal prosecution for, or grand jury investigation of, a felony; or

(6) The applicant has not repaid a loan received from the United States as prescribed under §§1.10 and 71.11 of this chapter; or

(7) The applicant is in default on a loan received from the United States to effectuate his or her return from a foreign country in the course of travel abroad.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that:

(1) The applicant has not repaid a loan received from the United States to effectuate his or her return from a foreign country in the course of travel abroad; or

(2) The applicant has been legally declared incompetent unless accompanied on his or her travel abroad by the guardian or other person responsible for the national's custody and well being; or

(3) The applicant is under the age of 18 years, unmarried and not in the military service of the United States unless a person having legal custody of such national authorizes issuance of the passport and agrees to reimburse the United States for any monies advanced by the United States for the minor to return to the United States; or

(4) The Secretary determines that the national's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States; or

(5) The applicant has been the subject of a prior adverse action under this section or § 51.71 and has not shown that a change in circumstances since the adverse action warrants issuance of a passport; or

(6) The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces pursuant to Chapter 47 of Title 10 of the United States Code.

§§ 51.71, 51.72 and 51.73 [Redesignated as §§ 51.72, 51.73 and 51.74 Respectively]

3. Current § 51.73 is redesignated as 51.74; § 51.72 is redesignated as 51.73; and §51.71 is redesignated as 51.72.

4. A new § 51.71 is added after § 51.70 and reads as follows:

§ 51.71 Denial of passports to certain convicted drug traffickers.

(a) A passport shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a felony conviction for a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, including a felony conviction arising under:

(1) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.); or

(2) Any Federal law involving controlled substances as defined in section 802 of the Controlled Substances Act (21 U.S.C. 801 et seq.); or

(3) The Bank Secrecy Act (31 U.S.C. 5311 et seq.) or the Money Laundering Act (18 U.S.C. 1956 et seq.) if the Secretary of State is in receipt of information that supports the determination that the violation involved is related to ilicit production of or trafficking in a controlled substance; or

(4) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(b) A passport may be refused in any case in which the Secretary of State determines or is informed by competent authority that the applicant is subject to imprisonment or supervised release as the result of a misdemeanor conviction of a Federal or state drug offense if the individual used a U.S. passport or otherwise crossed an international border in committing the offense, other than a first conviction for possession of a controlled substance, including a misdemeanor conviction arising under:

(1) The federal statutes described in § 51.71(a); or

(2) Any state law involving the manufacture, distribution, or possession of a controlled substance.

(c) Notwithstanding paragraphs (a) and (b) of this section the Secretary of State may issue a passport when the competent authority confirms, or the Secretary of State otherwise finds, that emergency circumstances or humanitarian reasons exist.

5. Newly redesignated § 51.72 is revised to read as follows:

§ 51.72 Revocation or restriction of passports.

A passport may be revoked or restricted or limited where:

(a) The national would not be entitled to issuance of a new passport under § 51.70 or § 51.71; or

(b) The passport has been obtained by fraud, or has been fraudulently altered, or has been fraudulently misused.

6. Current § 51.80 is revised to read as follows:

§ 51.80 Applicability of §§51.81 through 51.89.

The provisions of §§ 51.81 through 51.89 apply to any action of the Secretary taken on an individual basis in denying, restricting, revoking or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport except action taken by reason of noncitizenship, refusal to grant a discretionary exception under the emergency or humanitarian relief provisions of §51.71(c) or refusal to grant a discretionary exception from geographical limitations of general applicability. The provisions of this subpart shall constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under §§ 51.70, 51.71 or § 51.72.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89-17043 Filed 7-19-89; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS DEFENDER (MCM-2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS DEFENDER (MCM-2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizonal separation attained
USS DEFENDER	MCM-2							X	62

Dated: July 12, 1989.

Approved:

E.D. Stumbaugh,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 89-17011 Filed 7-19-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 90114-9135]

RIN 0651-AA42

Patent Term Extension for Animal Drug Products

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases directed to the extension of patent term. These amendments implement the patent term restoration provisions of Pub. L. No. 100-670, 102 Stat. 3971 (November 16, 1988) which permits owners of patents relating to new animal drugs or veterinary biological products that are

not biotechnology-generated to apply for extension of the terms of such patents in the same manner as owners of patents relating to human drugs, medical devices, food additives, or color additives are permitted to do under 35 U.S.C. 156.

EFFECTIVE DATE: August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn by telephone at [703] 557–4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Pub. L. No. 100–670 has made it possible for owners of patents directed to new animal drugs and to veterinary biological products that are not biotechnology-generated to apply for extension of the term of such patents in a manner similar to the owners of patents directed to human drugs, food additives, color additives, and medical devices. A new animal drug or veterinary biological product is biotechnology-generated if it is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques. The primary purpose of this rule change is to revise the present regulations contained in 37 CFR Part 1, Subpart F, to include the two additional categories of subject matter that can now form the basis of patent term extension. These regulations set forth procedures that govern the content and submission of applications for the extension of a patent term to the PTO, and procedures governing the extension determination and issuance of patent term extension certificates by the PTO.

Initial guidelines directed to the preparation and filing of applications for patent term extension as authorized by Pub. L. No. 100–670 were published as "Guidelines For Extension of Patent Term For New Animal Drugs or Veterinary Biological Products Under 35 U.S.C. 156 as Amended" in the Official Gazette. 1097 *Official Gazette* 63 (December 27, 1988). A notice of proposed rulemaking was published in the **Federal Register** on March 7, 1989, at 54 FR 9507 and in the Official Gazette. 1100 *Official Gazette* 128 (March 28, 1989). No oral hearing was conducted on these proposed rules. One written comment was received.

The only written comment received was directed to the proposed amendment to § 1.710(a). The proposed amendment indicated that a patent is eligible for extension of the patent term if the patent claims a product either alone or in combination with other ingredients that read on a composition that received permission for commercial marketing or use. The proposed modification was objected to because of the implication that patent term extension would not be available for composition patents where the claimed compositions do not read on the composition (new drug) approved by the FDA. Such an interpretation, it was argued, would unfairly and narrowly interpret the statute. The comment noted that where a marketing applicant seeks approval of multiple dosage forms or compositions of a new drug, the right to obtain patent term extension is triggered at the time the first new drug application is approved. In a typical situation, an injectable dosage form to be used for acute indications will require a lesser development time and be approved more rapidly than the oral dosage form of the same active ingredient intended for chronic administration. It was represented in the comment that justification for the drug development program might hinge on the expectation of an extension of an oral composition patent. If there were patents on both the injectable dosage form and the oral administration form containing the same active ingredient, which were mutually exclusive for the purposes of this illustration, the new drug holder, it is argued, should have a choice of which patent term to extend based on the first approval of a new chemical entry (NCE) drug. Finally, the comment suggested that the proposed amendment to § 1.710(a) with respect to composition patents stands in marked contrast to the situation which applies in the case of method of use patents. It is alleged, in the comment, that the rule in effect allows an extension of a method of use patent whenever the claimed method of use embraces the use of the active ingredient. According to the comment, where an NCE drug is first approved for the treatment of arthritis, a patent limited to an analgesic use of the NCE drug may be extended. (Note the requirement in § 1.740(a)(4) to identify the use for which the product was approved.)

These remarks made in this comment raise a substantive issue relating to the eligibility of patents for patent term extension under 35 U.S.C. 156 that is not addressed in the rules. The exercise of the Commissioner's rulemaking authority under 35 U.S.C. 6 and 156 can neither enlarge nor reduce the scope of eligibility of a patent for patent term extension under 35 U.S.C. 156. Secondly, the proposed amendment to § 1.710(a) is clearly couched in terms which are permissive without either explicitly or implicitly excluding other possibilities. The proposed amendment was made in response to many inquiries received over the years since enactment of 35 USC 156 as to whether a formulation or composition claim in a patent could form a basis for eligibility for patent term extension. Finally, the PTO has a long-standing policy of not addressing an issue in advance of receiving an application presenting the issue for determination. The issue of whether a patent is eligible for patent term extension that could not be enforced in either the original or extended term against the approved formulation or use that allegedly would give rise to eligibility has not been addressed yet by the PTO.

PTO experience to date did involve consideration of two applications that were filed based on approval of the human drug product OCUFEN Ophthalmic Solution, which contains the active ingredient Flurbiprofen [2-(2-fluoro-4-biphenylyl) propionic acid]. Relevant claims from the two patents that were the subject of the applications for patent term extension were as follows:

I. Patent 3,755,427 (issued August 28, 1973)

Claim 2. 2-(2-fluoro-4-biphenylyl)propionic acid.

II. Patent 3,793,457 (issued February 19, 1974)

Claim 1. A therapeutic composition useful in the treatment of pain, inflammation, and pyretic conditions which comprises a compound selected from the group consisting of 2-(2-fluoro-4-biphenylyl) propionic acid, [2-(2'-fluoro-4-biphenylyl) propionic acid, and 2-(2,2'-difluoro-4-biphenylyl) propionic acid in association with a pharmaceutically acceptable excipent the amount of said compound present in said composition being an amount effective against at least one of said conditions.

Claim 2 of the earlier issued patent is directed to the active ingredient per se, whereas claim 1 of Patent No. 3,793,457 is directed to a formulation which can contain Flurbiprofen in an amount which was effective in the treatment of pain, inflammation, and pyretic conditions.

However, since the approved indication for Ocufen was for the inhibition of intraoperative miosis, it was not immediately apparent to the PTO whether the '457 patent claimed the product within the meaning of 35 U.S.C. 156. Our view was that the 1984 Act was intended to restore to those patent owners a portion of the enforceable term of an appropriate patent of their choice which was lost due to Government required regulatory review for the product covered by the patent prior to the commercial marketing of the claimed product or the use thereof. If the patent could not be enforced against an infringer who was making, using, or selling an ophthalmic solution containing Flurbiprofen for the treatment of intraoperative miosis, it was questioned how the restoration of the lost patent term due to the regulatory process for the approved product is appropriate under the statute.

In this case, the applicant for patent term extension submitted evidence that Flurbiprofen, in an amount of 0.0004% to 0.1%, has anti-inflammatory activity in the eye when topically administered. The approved label showed that Ocufen contained 0.03% of the active ingredient and stated that the product is "a topical nonsteroidal anti-inflammatory product for ophthalmic use." The specification of the '457 patent indicated that useful compositions preferably contain 0.1–90% by weight of a compound of the invention. Thus, the dosage of the active ingredient for the indicated use clearly overlapped the effective dosages specified in the functional language of claim 1 of the '457 patent. On the basis of this evidence, the PTO concluded that the later issued patent claimed the product. As both patents were determined to be eligible for patent term extension, applicant was permitted to choose the single patent term to be extended. 35 U.S.C. 156(c)(4).

Discussion of Specific Rules

Section 1.710(a) specifically sets forth the existing policy and practice relating to eligibility of patents claiming a composition or formulation that includes the active ingredient. A patent is considered to claim the product at least in those situations where the patent claims the active ingredient per se, or claims a composition or formulation which contains the active ingredient(s) and reads on the composition or formulation approved for commercial marketing or use.

Section 1.710(b) revises the definition of human drug product in paragraph (b)(1) to make the definition conform to Pub. L. No. 100–670. A new paragraph (b)(2) is added to expand the definition of "product" in § 1.710(a) to include a new animal drug and a veterinary biological product, but not one that is primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques. Present paragraph (b)(2) is redesignated as paragraph (b)(3). It should be understood that the discussion here of new animal drugs and veterinary biological products is limited to the animal drugs and products defined in Pub. L. No. 100–670.

Paragraph (e)(2) of § 1.720 is revised to indicate that the conditions given therein concern a patent for a product other than one recited in §1.710(b)(2), due to the exclusion of biotechnology-generated new animal drugs and veterinary biological products in Pub. L. No. 100–670. A new paragraph (e)(3) is added to §1.720 directed to the provision in 35 U.S.C. 156(a)(5)(C), which permits the term of a patent directed to a new animal drug or veterinary biological product to be extended based on a second or subsequent approval of the active ingredient provided all the following conditions exist: (a) The patent claims the drug or product, (b) the drug or product is not covered by the claims in any other patent that has been extended ("covered by the claims" means that the drug or product would infringe a claim in the other patent), (c) the patent term was not extended on the basis of the regulatory review period for use in non-food-producing animals, and (d) the second or subsequent approval was the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal. A new portion is added to paragraph (f) directed to the case where eligibility is to be based on 35 U.S.C. 156(a)(5)(C). In this latter case, the application must be filed within 60 days of the first approval for administration to a food-producing animal.

Paragraph (a)(4) of § 1.740(a) is amended to (1) eliminate "human" as a modifier for "product", (2) add the Public Health Service Act and the Virus-Serum-Toxin Act to the list of appropriate statutes, and (3) add a requirement to indicate the use for which the product was approved. The first two amendments are necessary to comply with terms of 35 U.S.C. 156 as amended, and the third amendment is necessary to a determination of eligibility where, for example, the application is based on a second or subsequent approval of an active ingredient, but the first approval for administration to a food-producing animal. Paragraph (a)(9) is amended to eliminate the requirement to set forth the statement, beginning on a new page, that the patent for which patent term extension is sought claims the approved product or a method of using or making same, and the required showing listing each applicable claim of the patent and demonstrating the manner in which each applicable claim reads on the approved product or a method of using or making same. This change is made because the information required by this paragraph is within the province of PTO review and there is no need to have such information recited in a readily segregable section of the application. Paragraph (a)(10) is amended to indicate that, as appropriate, the Secretary of Health and Human Services or the Secretary of Agriculture will determine the applicable regulatory review period. Paragraph (a)(10)(i) is amended to recite that a Product License Application is a type of application that may be recited in an application for term extension of a patent claiming a human biological product. New paragraphs (a)(10)(ii) and (a)(10)(iii) are added to set forth the type of tests or applications that are to be considered for determination of the applicable regulatory review period for patents claiming a new animal drug or a veterinary biological product. Present paragraphs (a)(10)(ii) and (a)(10)(iii) are redesignated as paragraphs (a)(10)(iv) and (a)(10)(v), respectively. Paragraph (a)(10)(v) has been amended to reflect that approval of a medical device could be made through the use of a product development protocol. Paragraph (a)(13) is amended to indicate that the duty to disclose any information material to the determination of entitlement to the extension sought applies also to the Secretary of Agriculture where the regulatory review was conducted by the USDA.

Section 1.741(a)(2) is amended to acknowledge that regulatory review may take place under more than one Federal statute and that each appropriate statute should be listed. This amendment is intended to apply to a situation where a human biological product is tested under an investigational new drug (IND) application pursuant to the Federal Food, Drug, and Cosmetic Act, but is approved under the Public Health Service Act. The amendment is not intended to include a situation where approval is sought for use of a particular medical device with a specific drug product which may require approval under more than a single provision of law. The product that forms the basis of an application for patent term extension

must be either a medical device or a drug product; it cannot be a combination of those separate products. See the file history of U.S. Patent No. 4,428,744 for an example of the application of this principle.

Section 1.741(a)(5) is amended to recognize that the Secretary of Agriculture may determine the length of the regulatory review period where the regulatory review of the product takes place at the USDA. The section is further modified to point out that a determination of the length of the regulatory review period is made under 35 U.S.C. 156(g), and not the length of the patent term extension that is made by the PTO under 35 U.S.C. 156(c).

Section 1.765(a) is amended to recite that a duty of candor and good faith is owed to the Secretary of Agriculture in patent term extension proceedings wherein the USDA is involved.

The title of § 1.775 is amended to reflect that the section is directed to calculating patent term extension for human drug, antibiotic drug, and human biological products. Paragraphs (a), (b), (c), and (d) are amended to indicate that the determinations are being made for any of a human drug, an antibiotic drug, or a human biological product. Sections (c)(1) and (c)(2) are amended to refer merely to a "product" rather than to a "human drug product" or a "drug product" in order to make the sections clearer.

Section 1.778 is added to set forth the manner of calculation of the patent term extension for an animal drug product.

Paragraph (a) specifies that the extension will run from the original expiration date of the patent as shortened by any terminal disclaimer.

Paragraph (b) of § 1.778 provides that the patent term will be extended by the regulatory review period for the product but reduced, where appropriate, by the time periods provided in paragraph (d).

Paragraph (c) defines how the regulatory review period is to be calculated. The period is determined by counting:

(1) The number of days in the period beginning on the earlier of the dates a major health or environmental effects test was initiated on the drug or an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for the drug and ending on the date an application was initially submitted for the drug under section 512 of the Federal Food, Drug, and Cosmetic Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved drug under subsection (b) of section 512 of the Federal Food, Drug, and Cosmetic Act and ending on the date the application was approved under the section.

The added total of the days determined in subparagraphs (c)(1) and (c)(2) constitutes the regulatory review period, which is then reduced, where appropriate, by the time periods described in paragraph (d).

Paragraph (d) of § 1.778 modifies the term of the patent extension by indicating that

(1) The time period determined from paragraph (c) would be reduced, where appropriate, by—

(i) The number of days in the period of paragraphs (c)(1) and (c)(2) of § 1.778 that were before the date on which the patent issued;

(ii) The number of days in paragraphs (c)(1) and (c)(2) of § 1.778 during which it is determined under 35 U.S.C. 156(d)(2)(B) that applicant did not act with due diligence; and

(iii) The number of days equal to one-half the number of days remaining in paragraph (c)(1) afer the paragraph (c)(1) determination has been reduced in accordance with paragraphs (d)(1)(i) and (d)(1)(ii) of § 1.778 (half days to be ignored for subtraction purposes);

(2) Adding the number of days determined in paragraph (d)(1) to the original expiration date of the patent as shortened by any terminal disclaimer;

(3) Adding 14 years to the date of approval of the application under section 512 of the Federal Food, Drug, and Cosmetic Act;

(4) Comparing the dates obtained from paragraphs (d)(2) and (d)(3) with each other and selecting the earlier date;

(5) If the original patent issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(ii) Comparing the dates obtained from paragraphs (d)(4) and (d)(5)(i) with each other and selecting the earlier date;

(6) If the original patent issued before November 16, 1988, and

(i) If no major health or environmental effects test on the drug was initiated and no request was submitted for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) with each other and selecting the earlier date; or

(ii) If a major health or environmental effects test was initiated or a request for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act was submitted before November 16, 1988, and the application for commercial marketing or use of the drug was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained from paragraphs (d)(4) and (d)(6)(ii)(A) with each other and selecting the earlier date.

Section 1.779 is added to set forth the manner of calculation of the patent term extension for a veterinary biological product.

Paragraph (a) specifies that the extension runs from the original expiration date of the patent as shortened by any terminal disclaimer.

Paragraph (b) of § 1.779 provides that the patent term would be extended by the regulatory review period for the product but reduced, where appropriate, by the time periods provided in paragraph (d).

Paragraph (c) defines how the regulatory review period is to be calculated. The period is determined by counting

(1) The number of days in the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license wsa initially submitted under the Virus-Serum-Toxin Act and ending on the date a license was issued.

The added total of the days determined in paragraphs (c)(1) and (c)(2) constitutes the regulatory review period, which is then reduced, where appropriate, by the time periods described in paragraph (d).

Paragraph (d) of § 1.779 defines the term of the patent extension by indicating that:

(1) The time period determined from paragraph (c) would be reduced, where appropriate, by—

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) during which it is determined under 35 U.S.C.

156(d)(2)(B) that the applicant did not act with due diligence; and

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) after that period is reduced in accordance with paragraphs (d)(1)(i) and (d)(1)(ii) (half days being ignored for purposes of subtraction);

(2) Adding the number of days determined in paragraph (d)(1) to the original term of the patent as shortened by any terminal disclaimer;

(3) Adding 14 years to the date of the issuance of a license under the Virus-Serum-Toxin Act;

(4) Comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) and selecting the earlier date;

(5) If the patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) with each other and selecting the earlier date;

(6) If the original patent issued before November 16, 1988, and

(i) If no request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) with each other and selecting the earlier date; or

(ii) If a request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, and the commercial marketing or use of the product was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent as shortened by any terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) and selecting the earlier date.

Section 1.785(b) is amended to indicate that, in those instances where an applicant is seeking patent term extension for two or more patents based upon the same regulatory review period, the applicant will have the right to elect which patent is to have its term extended. In the absence of the election by applicant, the Commissioner will extend that patent having the earliest date of issuance.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. No. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The rule change setting forth procedures allowing owners of patents directed to new animal drugs and veterinary biological products to apply for extension of patent term would not be expected to result in any adverse economic impact on small entities because patented drugs are generally not commercialized by small entities.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change contains a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* which has been approved by the Office of Management and Budget under control number 0651–0020. Preparation of an application for patent term extension is estimated to take approximately sixty hours, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Organization, Patent and Trademark Office, Washington, DC 20231, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Paperwork Reduction Project 0651–0030) No comments regarding this burden estimate or any other aspect of this collection of information were received in response to the notice of proposed rulemaking.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interest, Courts, Inventions and patents, Lawyers.

For the reasons given in the preamble and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 156, the PTO is amending Part 1 of Title 37 of the Code of Federal Regulations as set forth below.

Subpart F—Extension of Patent Term

1. The authority citation for 37 CFR Part 1, Subpart F, continues to read as follows:

Authority: 35 U.S.C. 6 and 156.

2. Section 1.710 is revised to read as follows:

§ 1.710 Patents subject to extension of the patent term.

(a) A patent is eligible for extension of the patent term if the patent claims a product as defined in paragraph (b) of this section, either alone or in combination with other ingredients that read on a composition that received permission for commercial marketing or use, or a method of using such a product, or a method of manufacturing such a product, and meets all other conditions and requirements of this subpart.

(b) The term "product" referred to in paragraph (a) of this section means—

(1) The active ingredient of a new human drug, antibiotic drug, or human biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act) including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient; or

(2) The active ingredient of a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act and the Virus-Serum-Toxin Act) that is not primarily manufactured using recombinant DNA, recombinant RNA, hybridoma technology, or other processes including site specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a

single entity or in combination with another active ingredient; or

(3) Any medical device, food additive, or color additive subject to regulation under the Federal Food, Drug, and Cosmetic Act.

3. Section 1.720 is amended by revising paragraphs (e)(2) and (f) and adding paragraph (e)(3) to read as follows:

§ 1.720 Conditions for extension of patent term.

* * * * *

(e) The product has received permission for commercial marketing or use and—

* * * * *

(2) In the case of a patent other than one directed to subject matter within § 1.710(b)(2) claiming a method of manufacturing the product that primarily uses recombinant DNA technology in the manufacture of the product, the permission for the commercial marketing or use is the first received permission for the commercial marketing or use of a product manufactured under the process claimed in the patent, or

(3) In the case of a patent claiming a new animal drug or a veterinary biological product that is not covered by the claims in any other patent that has been extended, and has received permission for the commercial marketing or use in non-food-producing animals and in food-producing animals, and was not extended on the basis of the regulatory review period for use in non-food-producing animals, the permission for the commercial marketing or use of the drug or product after the regulatory review period for use in food-producing animals is the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal.

(f) The application is submitted within the sixty-day period beginning on the date the product first received permission for commercial marketing or use under the provisions of law under which the applicable regulatory review period occurred; or in the case of a patent claiming a method of manufacturing the product which primarily uses recombinant DNA technology in the manufacture of the product, the application for extension is submitted within the sixty-day period beginning on the date of the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent; or in the case of a patent that claims a new animal drug or a veterinary biological product that is not covered by the claims in any other patent that has been extended, and said drug or product has received permission for the commercial marketing or use in non-food-producing animals, the application for extension is submitted within the sixty-day period beginning on the date of the first permitted commercial marketing or use of the drug or product for administration to a food-producing animal;

* * * * *

4. Section 1.740 is amended by revising paragraphs (a)(4), (a)(9), (a)(10) and (a)(13) to read as follows:

§ 1.740 Application for extension of patent term.

(a) An application for extension of patent term must be made in writing to the Commissioner of Patents and Trademarks. A formal application for the extension of patent term shall include:

* * * * *

(4) In the case of a drug product, an identification of each active ingredient in the product and as to each active ingredient, a statement that it has not been previously approved for commercial marketing or use under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or the Virus-Serum-Toxin Act, or a statement of when the active ingredient was approved for commercial marketing or use (either alone or in combination with other active ingredients), the use for which it was approved, and the provision of law under which it was approved.

* * * * *

(9) A statement that the patent claims the approved product or a method of using or manufacturing the approved product, and a showing which lists each applicable patent claim and demonstrates the manner in which each applicable patent claim reads on the approved product or method of using or manufacturing the approved product;

(10) A statement, beginning on a new page, of the relevant dates and information pursuant to 35 U.S.C. 156(g) in order to enable the Secretary of Health and Human Services or the Secretary of Agriculture, as appropriate, to determine the applicable regulatory review period as follows:

(i) For a patent claiming a human drug, antibiotic, or human biological product, the effective date of the investigational new drug (IND) application and the IND number; the date on which a new drug application (NDA) or a Product License Application (PLA) was initially submitted and the NDA or PLA number and the date on which the NDA was approved or the Product License issued;

(ii) For a patent claiming a new animal drug, the date a major health or environmental effects test on the drug was initiated and any available substantiation of the date or the date of an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for such animal drug; the date on which a new animal drug application (NADA) was initially submitted and the NADA number; and the date on which the NADA was approved;

(iii) For a patent claiming a veterinary biological product, the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective; the date an application for a license was submitted under the Virus-Serum-Toxin Act; and the date the license issued;

(iv) For a patent claiming a food or color additive, the date a major health or environmental effects test on the additive was initiated and any available substantiation of that date; the date on which a petition for product approval under the Federal Food, Drug, and Cosmetic Act was initially submitted and the petition number; and the date on which the FDA published the Federal Register notice listing the additive for use;

(v) For a patent claiming a medical device, the effective date of the investigational device exemption (IDE) and the IDE number, if applicable, or the date on which the applicant began the first clinical investigation involving the device if no IDE was submitted and any available substantiation of that date; the date on which the application for product approval or notice of completion of a product development protocol under section 515 of the Federal Food, Drug, and Cosmetic Act was initially submitted and the number of the application or protocol; and the date on which the application was approved or the protocol declared to be completed.

* * * * *

(13) A statement that applicant acknowledges a duty to disclose to the Commissioner of Patents and Trademarks and the Secretary of Health and Human Services or the Secretary of Agriculture any information which is material to the determination of entitlement to the extension sought (see § 1.765);

* * * * *

5. Section 1.741 is amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

§ 1.741 Filing date of the application.

(a) * * *

(2) An identification of each Federal statute under which regulatory review occurred.

* * * * *

(5) Sufficient information to enable the Commissioner to determine under 35 U.S.C. 156 subsections (a) and (b) the eligibility of a patent for extention and the rights that will be derived from the extension and information to enable the Commissioner and the Secretary of Health and Human Services or the Secretary of Agriculture to determine the length of the regulatory review period; and

* * * * *

6. Section 1.765 is amended by revising paragraph (a) to read as follows:

§ 1.765 Duty of disclosure in patent term extension proceedings.

(a) A duty of candor and good faith toward the Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture rests on the patent owner or its agent, on each attorney or agent who represents the patent owner and on every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding. All such individuals who are aware, or become aware, of material information adverse to a determination of entitlement to the extension sought, which has not been previously made of record in the patent term extension proceeding must bring such information to the attention of the Office of the Secretary, as appropriate, in accordance with paragraph (b) of this section, as soon as it is practical to do so after the individual becomes aware of the information. Information is material where there is a substantial likelihood that the Office of the Secretary would consider it important in determinations to be made in the patent term extension proceeding.

* * * * *

7. Section 1.775 is amended by revising the title and paragraphs (a), (b), (c), and (d) introductory text to read as follows:

§ 1.775 Calculation of patent term extension for a human drug, antibiotic drug or human biological product.

(a) If a determination is made pursuant to § 1.750 that a patent for a human drug, antibiotic drug or human biological product is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for a human drug, antibiotic drug or human biological product will be extended by the length of the regulatory review period for the product as determined by the Secretary of Health and Human Services, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for a human drug, antibiotic drug or human biological product will be determined by the Secretary of Health and Human Services. Under 35 U.S.C. 156(g)(1)(B), it is the sum of—

(1) The number of days in the period beginning on the date an exemption under subsection (i) of section 505 or subsection (d) of section 507 of the Federal Food, Drug, and Cosmetic Act became effective for the approved product and ending on the date the application was initially submitted for such product under those sections or under section 351 of the Public Health Service Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved product under section 351 of the Public Health Service Act, subsection (b) of section 505 or section 507 of the Federal Food, Drug, and Cosmetic Act and ending on the date such application was approved under such section.

(d) The term of the patent as extended for a human drug, antibiotic drug or human biological product will be determined by—

* * * * *

8. Section 1.778 is added to Subpart F to read as follows:

§ 1.778 Calculation of patent term extension for an animal drug product.

(a) If a determination is made pursuant to § 1.750 that a patent for an animal drug is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for an animal drug will be extended by the length of the regulatory review period for the drug as determined by the Secretary of Health and Human Services, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for an animal drug will be determined by the Secretary of Health and Human Services. Under 35 U.S.C. 156(g)(4)(B), it is the sum of—

(1) The number of days in the period beginning on the earlier of the date a major health or environmental effects test on the drug was initiated or the date an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act became effective for the approved animal drug and ending on the date an application was initially submitted for such animal drug under section 512 of the Federal Food, Drug, and Cosmetic Act; and

(2) The number of days in the period beginning on the date the application was initially submitted for the approved animal drug under subsection (b) of section 512 of the Federal Food, Drug, and Cosmetic Act and ending on the date such application was approved under such section.

(d) The term of the patent as extended for an animal drug will be determined by—

(1) Subtracting from the number of days determined by the Secretary of Health and Human Services to be in the regulatory review period:

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section during which it is determined under 35 U.S.C. 156(d)(2)(B) by the Secretary of Health and Human Services that applicant did not act with due diligence;

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) of this section after that period is reduced in accordance with paragraphs (d)(1) (i) and (ii) of this section; half days will be ignored for purposes of subtraction;

(2) By adding the number of days determined in paragraph (d)(1) of this section to the original term of the patent as shortened by any terminal disclaimer;

(3) By adding 14 years to the date of approval of the application under section 512 of the Federal Food, Drug, and Cosmetic Act;

(4) By comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) of this section with each other and selecting the earlier date;

(5) If the original patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(6) If the original patent was issued before November 16, 1988, and

(i) If no major health or environmental effects test on the drug was initiated and no request was submitted for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) of this section with each other and selecting the earlier date; or

(ii) If a major health or environmental effects test was initiated or a request for an exemption under subsection (j) of section 512 of the Federal Food, Drug, and Cosmetic Act was submitted before November 16, 1988, and the application for commercial marketing or use of the animal drug was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent or earlier date set by terminal disclaimer, and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) of this section with each other and selecting the earlier date.

9. Section 1.779 is added to Subpart F to read as follows:

§ 1.779 Calculation of patent term extension for a veterinary biological product.

(a) If a determination is made pursuant to § 1.750 that a patent for a veterinary biological product is eligible for extension, the term shall be extended by the time as calculated in days in the manner indicated by this section. The patent term extension will run from the original expiration date of the patent or any earlier date set by terminal disclaimer (§ 1.321).

(b) The term of the patent for a veterinary biological product will be extended by the length of the regulatory review period for the product as determined by the Secretary of Agriculture, reduced as appropriate pursuant to paragraphs (d)(1) through (d)(6) of this section.

(c) The length of the regulatory review period for a veterinary biological product will be determined by the Secretary of Agriculture. Under 35 U.S.C. 156(g)(5)(B), it is the sum of—

(1) The number of days in the period beginning on the date the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act became effective and ending on the date an application for a license was submitted under the Virus-Serum-Toxin Act; and

(2) The number of days in the period beginning on the date an application for a license was initially submitted for approval under the Virus-Serum-Toxin Act and ending on the date such license was issued.

(d) The term of the patent as extended for a veterinary biological product will be determined by—

(1) Subtracting from the number of days determined by the Secretary of Agriculture to be in the regulatory review period:

(i) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section that were on and before the date on which the patent issued;

(ii) The number of days in the periods of paragraphs (c)(1) and (c)(2) of this section during which it is determined under 35 U.S.C. 156(d)(2)(B) by the Secretary of Agriculture that applicant did not act with due diligence;

(iii) One-half the number of days remaining in the period defined by paragraph (c)(1) of this section after that period is reduced in accordance with paragraphs (d)(1)(i) and (ii) of this section; half days will be ignored for purposes of subtraction;

(2) By adding the number of days determined in paragraph (d)(1) of this section to the original term of the patent as shortened by any terminal disclaimer;

(3) By adding 14 years to the date of the issuance of a license under the Virus-Serum-Toxin Act;

(4) By comparing the dates for the ends of the periods obtained pursuant to paragraphs (d)(2) and (d)(3) of this section with each other and selecting the earlier date;

(5) If the original patent was issued after November 16, 1988, by—

(i) Adding 5 years to the original expiration date of the patent or any earlier date set by terminal disclaimer; and

(ii) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(5)(i) of this section with each other and selecting the earlier date;

(6) If the original patent was issued before November 16, 1988, and

(i) If no request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, by—

(A) Adding 5 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(i)(A) of this section with each other and selecting the earlier date; or

(ii) If a request for the authority to prepare an experimental biological product under the Virus-Serum-Toxin Act was submitted before November 16, 1988, and the commercial marketing or use of the product was not approved before November 16, 1988, by—

(A) Adding 3 years to the original expiration date of the patent or earlier date set by terminal disclaimer; and

(B) Comparing the dates obtained pursuant to paragraphs (d)(4) and (d)(6)(ii)(A) of this section with each other and selecting the earlier date.

10. Section 1.785 is amended to revise paragraph (b) to read as follows:

§ 1.785 Multiple applications for extension of term of the same patent or of different patents for the same regulatory review period for a product.

* * * * *

(b) If more than one application for extension is filed by a single applicant which seeks the extension of the term of two or more patents based upon the same regulatory review period, and the applications or otherwise eligible for extension pursuant to the requirement of this subpart, in the absence of an election by applicant, the certificate of extension of patent term, if appropriate, will be issued upon the application for extension of the patent term having the earliest date of issuance of those patents for which extension is sought.

Date: May 31, 1989.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 89-16991 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent

improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–3042).

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgages credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812(f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a)(1), (2), and (3), and 36.4311(a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: July 14, 1989.

By direction of the Secretary.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—[AMENDED]

1. In § 36.4212, paragraph (a) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1812 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA prior to the respective data:

(Authority: 38 U.S.C. 1812(f))

(1) Effective July 17, 1989, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective July 17, 1989, 11½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective July 17, 1989, 11½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 9½ per centum per annum, effective July 17, 1989, the interest rate on any home or condominium loan, other than a graduated payment mortgage, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 9¾ per centum per annum, effective July 17, 1989, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective July 17, 1989, the interest rate on any loan solely for energy conservative improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 89-17009 Filed 7-19-89; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6839]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region III—Regular Conversions			
Pennsylvania:			
Greensboro, borough of, Greens County	420477	Mar. 2, 1989, suspension withdrawn	Mar. 2, 1989.
Orwigsburg, borough of, Schuylkill County	421204	do	Do.
Spruce Creek, township of, Huntingdon County	422621	do	Do.
Union, township of, Huntingdon County	421704	do	Do.
Region IV			
North Carolina: Hoke County, unincorporated areas	370397	do	Do.
South Carolina: Lake View, town of, Dillon County	450066	do	Do.
Region V			
Michigan: Nottawa, township of, St. Joseph County	260514	do	Do.
Ohio: Shelby, city of, Richland County	390479	do	Do.
Region III			
Pennsylvania:			
Clifford, township of, Susquehanna County	422077	Mar. 16, 1989 suspension withdrawn	Mar. 16, 1989.
Franklin, township of, Beaver County	421065	do	Do.
Greenwood, township of, Columbia County	421551	do	Do.
West Virginia:			
Richmond County, Richmond County	510310	do	Do.
Paden City, city of, Tyler and Wetzel Counties	540196	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Pennsylvania: Mill Creek, borough of, Huntingdon County	420488	....do	Mar. 2, 1989.
Region IV			
South Carolina: Pawleys Island, town of, Georgetown County	450251	....do	Mar. 16, 1989.
Region VII			
Iowa: Clayton, city of, Clayton County	190072	....do	Do.
Arkansas: Arkansas County, unincorporated areas	050418	Apr. 5, 1989, Emerg	Aug. 16, 1977.
Louisiana: Varnado, village of, Washington Parish	220234	Apr. 5, 1989, Emerg.; Apr. 5, 1989, Reg	Feb. 17, 1989.
California: Avenal, city of, Kings County	065073	Apr. 5, 1989, Emerg.; Apr. 5, 1989, Reg	May 17, 1988.
Pennsylvania:			
Berlin, township of, Wayne County	422158	Jan. 23, 1976, Emerg.; July 15, 1988, Reg.; July 15, 1988, Susp.; Apr. 10, 1989, Rein.	July 15, 1988.
Sewickley Hills, borough of, Allegheny County	420072	Dec. 10, 1976, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Apr. 11, 1989, Rein.	Sept. 1, 1986.
Greene, township of, Clinton County	421538	Oct. 14, 1975, Emerg.; Sept. 1, 1986, Reg.; Sept. 1, 1986, Susp.; Apr. 11, 1989, Rein.	Do.
Tennessee: Alcoa, city of, Blunt County	475421	Jan. 15, 1971, Emerg.; Jan. 8, 1972, Reg.; Feb. 4, 1988, Susp.; Apr. 12, 1989, Rein.	Apr. 15, 1977.
Idaho: Rathdrum, city of, Kootenai County	160187	Apr. 23, 1975, Emerg.; Sept. 28, 1984, Reg.; July 4, 1988, Susp.; Apr. 12, 1989, Rein.	Sept. 28, 1984.
Pennsylvania: Marion, township of, Beaver County	422249	Aug. 6, 1974, Emerg.; Mar. 2, 1989, Reg.; Mar. 2, 1989, Susp.; Apr. 14, 1989, Rein.	Mar. 2, 1989.
Georgia: Chattooga County, unincorporated areas	130036	Apr. 13, 1989, Emerg	Mar. 26, 1976.
Texas: Meadowlakes, city of, Burnet County [1]	481613	....do	Do.
Kentucky: Bullitt County, unincorporated areas [2]	210273	Apr. 11, 1989, Emerg	May 20, 1977.
Texas: Gaines County, unincorporated areas	481219	Apr. 19, 1989, Emerg	Do.
California: Alpine County, unincorporated areas	060632	Apr. 19, 1989, Emerg.; Apr. 19, 1989, Reg	Nov. 19, 1987.
Kentucky: Falmouth, city of, Pendleton County [2]	210189	Nov. 5, 1975, Emerg.; July 3, 1986, Reg.; July 3, 1986, Susp.; Apr. 12, 1989, Rein.	July 3, 1986.
Florida: Zolfo Spring, town of, Hardee County	120106	July 2, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.; Apr. 21, 1989, Rein.	May 4, 1988.
Michigan:			
Coe, township of, Isabella County	[3] 260819	Apr. 24, 1989, Emerg	Do.
Isabella, township of, Isabella County	[3] 260820	....do	Do.
Nottawa, township of, Isabella County	[3] 260821	....do	Do.
Rolland, township of, Isabella County	260422	....do	Do.
Sherman, township of, Isabella County	[3] 260822	....do	Do.
North Dakota: Williams County, unincorporated areas	380146	....do	Do.
Kentucky: Carlisle County, unincorporated areas [2]	210042	Apr. 18, 1989, Emerg	July 27, 1977.
Michigan: Woodhaven, city of, Wayne County	260730	Apr. 24, 1989, Emerg.; Apr. 24, 1989, Reg	Feb. 5, 1986.
Kentucky:			
Hart County, [2] unincorporated areas	210257	Apr. 21, 1989, Emerg	July 8, 1977.
Versailles, city of, Woodford County	210231	....do	July 29, 1977.
Region I			
Maine: Wayne, town of, Kennebec County	230188	Apr. 3, 1989, suspension withdrawn	Apr. 3, 1989.
Region III			
Pennsylvania:			
Lenox, township of, Susquehanna County	422086	....do	Do.
Pine, township of, Columbia County	421556	....do	Do.
Adams, township of, Butler County	421415	Apr. 17, 1989, suspension withdrawn	Apr. 17, 1989
Callery, borough of, Butler County	420213	....do	Do.
Region IV			
Kentucky: Nicholasville, city of, Jessamine County	210126	....do	Do.
Region V			
Minnesota:			
Bigfork, city of, Itasca County	270201	....do	Do.
Isanti, city of, Isanti County	270199	....do	Do.
Ohio:			
Fairfield County, unincorporated areas	390158	....do	Do.
Cumberland, village of, Guernsey County	390824	....do	Do.
Region VIII			
Colorado:			
Arapahoe County, unincorporated areas	080011	....do	Do.
Cherry Hills Village, city of, Arapahoe County	080013	....do	Do.
Columbine Valley, town of, Arapahoe County	080014	....do	Do.
De Beque, town of, Mesa County	080307	....do	Do.
Englewood, city of, Arapahoe County	085074	....do	Do.
Greenwood Village, city of, Arapahoe County	080195	....do	Do.
Sheridan, city of, Arapahoe County	080018	....do	Do.
Region IX			
Arizona: Maricopa County, unincorporated areas	040037	....do	Do.
Region X			
Idaho: McCall, city of, Valley County	160175	....do	Do.
Oregon: Mitchell, city of, Wheeler County	410247	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Arkansas: Perryville, city of, Perry County	050362	Mar. 12, 1976, Emerg.; Apr. 19, 1983, Reg.; Aug. 16, 1988, Susp.; May 1, 1989, Rein.	Apr. 19, 1983.
New Mexico: Espanola, city of, Santa Fe/Rio Arriba Counties	350052	Apr. 4, 1975, Emerg.; Feb. 19, 1986, Reg.; Aug. 16, 1988, Susp.; May 1, 1989, Rein.	Feb. 19, 1986.
Indiana: Fayette County, unincorporated areas	180417	Apr. 11, 1975, Emerg.; Sept. 1, 1988, Reg.; Sept. 1, 1988, Susp.; May 2, 1989, Rein.	Sept. 1, 1988.
Texas: Bayview, town of, Cameron County	480102	Oct. 7, 1975, Emerg.; Sept. 1, 1981, Reg.; Jan. 18, 1989, Susp.; May 8, 1989, Rein.	Do.
Kentucky: Washington County, unincorporated areas	210365	May 5, 1989, Emerg	Do.
Ohio: Port Jefferson, village of, Shelby County	390506	May 14, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; May 15, 1989, Rein.	Sept. 2, 1988.
Indiana: Johnson County, unincorporated areas	180111	July 24, 1975, Emerg.; Mar. 2, 1989, Reg.; Mar. 2, 1989, Susp.; May 15, 1989, Rein.	Mar. 2, 1989.
South Carolina: Darlington County, unincorporated areas	450060	May 15, 1989, Emerg	June 23, 1978
Tennessee: Carroll County, unincorporated areas	470222	do	Nov. 4, 1977.
Texas: Leakey, city of, Real County	480980	do	May 13, 1977.
Arkansas: Jasper, city of, Newton County	050160	July 10, 1975, Emerg.; Feb. 5, 1986, Reg.; Aug. 16, 1988, Susp.; May 16, 1989, Rein.	Feb. 5, 1986.
Texas: Newton County, unincorporated areas	480499	June 4, 1975, Emerg.; Apr. 1, 1987, Reg.; Sept. 2, 1988, Susp.; May 16, 1989, Rein.	Apr. 1, 1987.
Maryland: Walkersville, town of, Frederick County	240032	June 12, 1974, Emerg.; Sept. 30, 1980, Reg.; May 4, 1989, Susp.; May 16, 1989, Rein.	Sept. 30, 1980.
Pennsylvania:			
Lathrop, township of, Susquehanna County	422085	July 30, 1980, Emerg.; Apr. 3, 1989, Reg.; Apr. 3, 1989, Susp.; May 16, 1989, Rein.	Apr. 3, 1989.
Mars, borough of, Butler County	420220	June 10, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.; May 16, 1989, Rein.	May 4, 1989.
Nebraska: Tilden, city of, Antelope County	310401	Dec. 4, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.; May 19, 1989, Rein.	Sept. 4, 1987.
Missouri: Springfield, city of, Greene County	290149	Apr. 12, 1974, Emerg.; Sept. 4, 1978, Reg.; Sept. 4, 1978, Susp.; May 16, 1989, Rein.	Do.
Pennsylvania:			
Paradise, township of, Monroe County	421891	Jan. 30, 1980, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; May 22, 1989, Rein.	Sept. 2, 1988.
Pleasantville, borough of, Bedford County	421327	Mar. 8, 1977, Emerg.; Sept. 30, 1988, Reg.; Sept. 30, 1988, Susp.; May 22, 1989, Rein.	Sept. 30, 1988.
Lincoln, township of, Bedford County	421344	Aug. 21, 1975, Emerg.; Sept. 30, 1988, Reg.; Sept. 30, 1988, Susp.; May 22, 1989, Rein.	Do.
Illinois: Farmer City, city of, Dewitt County	170818	May 22, 1989, Emerg	Mar. 21, 1975.
New York: Centre Island, village of, Nassau County	360461	Aug. 19, 1975, Emerg.; Oct. 18, 1983, Reg.; Sept. 16, 1988, Susp.; May 24, 1989, Rein.	Oct. 18, 1983.
Georgia: Dade County, unincorporated areas	130246	Aug. 6, 1974, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; May 19, 1989, Rein.	May 17, 1989.
Minnesota: Koochiching County, unincorporated areas	270233	July 1, 1974, Emerg.; June 1, 1988, Reg.; May 1, 1989, Susp.; May 30, 1989, Rein.	June 1, 1988.
Missouri: Kimmswick, city of, Jefferson County	290193	Apr. 15, 1974, Emerg.; Jan. 6, 1982, Reg.; Jan. 6, 1982, Susp.; May 30, 1989, Rein.	Jan. 6, 1982.
Maryland: Harford County, unincorporated areas	240040	May 5, 1972, Emerg.; Mar. 2, 1983, Reg.; May 4, 1989, Susp.; May 30, 1989, Rein.	May 17, 1986.
Virginia: Madison County, unincorporated areas	510094	Aug. 9, 1974; Emerg.; Apr. 3, 1989, Reg.; Apr. 3, 1989, Susp.; May 31, 1989, Rein.	Apr. 3, 1989.
Pennsylvania: Auburn, borough of, Schuylkill County	420766	July 29, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; May 31, 1989, Rein.	May 17, 1989.
Texas: Marion County; unicorporated areas	[3] 481630	May 25, 1989; Emerg	Do.
Region VIII—Minimal Conversions			
Colorado: Bent County; unincorporated areas	080271	May 1, 1989, suspension withdrawn	May 1, 1989.
Region I—Regular Conversions			
Maine: Rockport, town of, Knox County	230077	May 4, 1989, suspension withdrawn	May 4, 1989.
New Hampshire:			
Northumberland, town of, Coos County	330036	do	Do.
Tuftonboro, town of, Carroll County	330234	do	Do.
Vermont:			
Brighton, town of, Essex County	500205	do	Do.
Reading, town of, Windsor County	500152	do	Do.
Region II			
New York: Western, town of, Oneida County	360564	do	Do.
Region III			
Pennsylvania:			
Greenwood, township of, Columbia County	421551	do	Mar. 16, 1989.
Harmony, borough of, Butler County	420217	do	May 4, 1989.
South Manheim, township of, Schuylkill County	422022	do	Do.
Valencia, borough of, Butler County	420223	do	Do.
Region V			
Illinois: Hanover, village of, Jo Daviess County	170755	do	Do.
Michigan:			
Allegan, city of, Allegan County	260003	do	Do.
Garfield, township of, Newaygo County	260469	do	Do.
Bangor, city of, Van Buren County	260529	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Ashland, township of, Newaygo County	260694	do	Do.
Wisconsin:			
Augusta, city of, Eau Claire County	550127	do	Do.
Ellsworth, village of, Pierce County	550325	do	Do.
Woodville, village of, St. Croix County	550390	do	Do.
Region VII			
Kansas: Ellsworth, city of, Ellsworth County	200098	do	Do.
Region VIII			
Wyoming: Teton County, unincorporated areas	560094	do	Do.
Region X			
Oregon: Fossil, city of, Wheeler County	410246	do	Do.
Region I			
Maine: South Thomaston, town of, Knox County	230078	May 17, 1989, Suspension withdrawn	May 17, 1989.
New Hampshire:			
Colebrook, town of, Coos County	330031	do	Do.
Greenland, town of, Rockingham County	330210	do	Do.
Littleton, town of, Grafton County	330064	do	Do.
Stratham, town of, Rockingham County	330197	do	Do.
Wolfeboro, town of, Carroll County	330239	do	Do.
Region III			
Pennsylvania:			
Cass, township of, Schuylkill County	422000	do	Do.
Hop Bottom, borough of, Susquehanna County	420812	do	Do.
Liberty, township of, Susquehanna County	422087	do	Do.
West Virginia: Kenova, city of, Wayne County	540221	do	Do.
Region IV			
Georgia:			
Upson County, unincorporated areas	130407	do	Do.
Thomaston, city of, Upson County	130408	do	Do.
Region V			
Michigan: Au Gres, township of, Arenac County	260013	do	Do.
Ohio:			
Apple Creek, village of, Wayne County	390642	do	Do.
Wayne County, unincorporated areas	390574	do	Do.
Lancaster, city of, Fairfield County	390161	do	April 17, 1989.
Region VII			
Iowa: Elliott, city of, Montgomery County	190209	do	May 17, 1989.
Region V—Minimal Conversions			
Michigan: Ravenna, township of, Muskegon County	260731	do	Do.
Minnesota: Waite Park, city of, Stearns County	270461	do	Do.
Region III—Minimal Conversions			
Pennsylvania:			
Addison, township of, Somerset County	422508	June 1, 1989, suspension withdrawn	June 1, 1989.
Hopewell, township of, Cumberland County	421581	do	Do.
Wellersburg, borough of, Somerset County	422526	do	Do.
Virginia: Louisa County, unincorporated areas	510092	do	Do.
Region II—Minimal Conversions			
New York:			
Fowler, town of, St. Lawrence County	360698	June 5, 1989, suspension withdrawn	June 5, 1989.
Philadelphia, town of, Jefferson County	360347	do	Do.
Region IV			
North Carolina: Elon College, town of, Alamance County	370411	do	Do.
Region V			
Michigan:			
Lake, township of, Benzie County	260030	do	Do.
Wayland, city of, Allegan County	260744	do	Do.
Region I—Regular Conversions			
Maine:			
China, town of, Kennebec County	230235	do	Do.
Eliot, town of, York County	230149	do	Do.
Kingfield, town of, Franklin County	230058	do	Do.
New Hampshire: Newfields, town of, Rockingham County	330228	do	Do.
Vermont: Newfane, town and village of, Windham County	500133	do	Do.
Massachusetts.:			
Andover, town of, Essex County	250076	do	Do.
Dracut, town of, Middlesex County	250190	do	Do.
Needham, town of, Norfolk County	255215	do	Do.
Weymouth, town of, Norfolk County	250257	do	Do.
Royalton town of, Windsor County	500153	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region III			
Pennsylvania:			
Benner, township of, Centre County	421460	do	Do.
Curtin, township of, Centre County	421462	do	Do.
Harris, township of Centre County	420262	do	Do.
Liberty, township of, Centre County	421196	do	Do.
Millheim, borough of, Centre County	420265	do	Do.
Region VI			
Texas:			
Bailey's Prairie, village of, Brazoria County	480065	do	Do.
Brazoria, city of, Brazoria County	480066	do	Do.
Oyster Creek, village of, Brazoria County	481255	do	Do.
West Columbia, city of, Brazoria County	480081	do	Do.
Region VIII			
Colorado: Georgetown, town of, Clear Creek County	080035	do	Do.
Region X			
Washington: Chelan County, unincorporated areas	530015	do	Do.
Region I			
Massachusetts:			
Wenham, town of, Essex County	250107	June 19, 1989, Suspension Withdrawn	June 19, 1989.
Worthington, town of, Hampshire County	250175	do	Do.
Maine:			
Owl's Head, town of, Knox County	230075	do	Do.
Bristol, town of, Lincoln County	230215	do	Do.
New Hampshire: Gilford, town of, Belknap County	330004	do	Do.
Vermont:			
Plymouth, town of, Windsor County	500151	do	Do.
Winhall, town of, Bennington County	500022	do	Do.
Region III			
Pennsylvania:			
Albion, borough of, Erie County	422409	do	Do.
Carbon, township of, Huntingdon County	421685	do	Do.
Center, township of, Butler County	421417	do	Do.
Cranesville, borough of, Erie County	421356	do	Do.
Dean, township of, Cambria County	421440	do	Do.
East Providence, township of, Bedford County	421336	do	Do.
Elder, township of, Cambria County	422592	do	Do.
Elk Creek, township of, Erie County	422412	do	Do.
Forward, township of, Butler County	421419	do	Do.
Lehman, township of, Pike County	421967	do	Do.
Snow Shoe, township of, Centre County	421198	do	Do.
Maryland: Brookeville, town of, Montgomery County	240166	do	Do.
Region IV			
Mississippi: Iuka, city of, Tishomingo County	280266	do	Do.
Region V			
Wisconsin: Sussex, village of, Waukesha County	550490	do	Do.
Region VIII			
Idaho: Elmore County, unincorporated areas	160212	do	Do.
Region V—Minimal Conversions			
Michigan: Crystal Lake, township of, Benzie County	260028	do	Do.
Minnesota: Winsted, city of, McLeod County	270661	do	Do.
Region III—Regular Conversions			
Pennsylvania:			
Beccaria, township of, Clearfield County	421512	July 4, 1989, Suspension Withdrawn	July 4, 1989.
Harrison, township of, Bedford County	421338	do	Do.
Little Meadows, borough of, Susquehanna County	420814	do	Do.
Mahaffey, borough of, Clearfield County	420310	do	Do.
North Franklin, township of, Washington County	422150	do	Do.
Sugarloaf, township of, Columbia County	421558	do	Do.
West Providence, township of, Bedford County	421353	do	Do.
Virginia: Northumberland County, unincorporated areas	510107	do	Do.
Region IV			
Alabama:			
Daleville, city of, Dale County	010061	do	Do.
Pell City, city of, St. Clair County	010189	do	Do.
Region V			
Minnesota: Blue Earth, city of, Faribault County	270116	do	Do.
Region VII			
Kansas: Bazine, city of, Ness County	200243	do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region VIII			
South Dakota: Mountain View, town of, Uinta County	560092	.....do.....	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.
[1] The City of Meadowlakes has adopted by reference Burnet County's Flood Hazard Boundary Map (FHBM) that became effective on *November 8, 1977.*
[2] Declared Disaster Areas.
[3] New.

Issued: July 13, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-16905 Filed 7-19-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-462; RM-6432]

Radio Broadcasting Services; Central, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of C.N. Morris, allots Channel 237C2 to Central, New Mexico, as the community's first local FM service. Channel 237C2 can be allotted to Central in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for this allotment are North Latitude 32-46-30 and West Longitude 108-09-18. Mexican concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective August 28, 1989. The window period for filing applications will open on August 29, 1989, and close on September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-462, adopted June 26, 1989, and released July 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM, Table of Allotments is amended by adding the following entry: Central, New Mexico, Channel 237C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-16955 Filed 7-19-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF LABOR

48 CFR Part 2919

Amendment to Department of Labor Acquisition Regulation

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) hereby amends Part 2919 of the Department of Labor Acquisition Regulation (DOLAR) to make editorial changes and delete material that duplicates existing Federal Acquisition Regulation (FAR) coverage.

DATE: The effective date of this rule is July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Adam W. Hare. Telephone: (202) 523-9174.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) has determined that this rule concerns agency procedures. These procedures are required to conform the DOLAR to existing FAR requirements. The purpose of this rule is to lower the dollar threshold from $25,000 to $10,000 for prior review of solicitations by the Small Business Administration Procurement Center Representative to conform with existing FAR requirements and to delete duplicative material regarding synopsizing of proposed procurement actions already contained in the FAR. The DOL has determined that this rule does not constitute a significant revision since it deletes duplicative materials and only impacts on internal DOL components. As a rule of agency procedure, this amendment is being issued as a final rule without inviting public comments (see 5 U.S.C. 553 (b)(A) and (d)(3)).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act: The DOL has determined that this rule is not a major rule under Executive Order 12291 and certifies that it will not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), since no new requirements are being imposed. This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Chapter 29

Government procurement.

For the reasons set out in the preamble, Chapter 29 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

48 CFR Chapter 29 is hereby amended as follows:

PART 2919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for Part 2919 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2919.202-1 [Removed]

2. Part 2919 is amended by removing 2919.202-1.

[FR Doc. 89-16918 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the three-day closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Cape Arago, Oregon, at midnight, July 14, 1989, to assess coho salmon landings. The Director, Northwest Region, NMFS (Regional Director), has determined that 75 percent of the commercial catch ceiling of 349,000 coho salmon for the subarea south of Cascade Head, Oregon, will be reached by that time. The closure is necessary to conform to the preseason announcement of 1989 management measures. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from Cape Falcon to Cape Arago, to commercial salmon fishing is effective at 2400 hours local time, July 14, 1989. The fishery will reopen at 0001 hours local time July 18, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Comments must be received by July 31, 1989.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR Part 661. In its preseason notice of 1989 management measures (54 FR 19798, May 8, 1989), NOAA announced that "When the STT [Salmon Technical Team] estimates 75 percent of the coho catch ceiling south of Cascade Head has been reached, the season between Cape Falcon and Punta Gorda will close for 3 days to assess whether landing limits or ratio fisheries should be continued or imposed." (Table 1, note C-7; 54 FR 19798).

The 1989 commercial catch ceiling for the subarea south of Cascade Head, Oregon, is 349,000 coho salmon. Based on the best available information, the commercial fishery catch south of Cascade Head is projected to reach 75 percent of the subarea coho catch ceiling by midnight, July 14, 1989. The season between Cape Arago, Oregon, and Punta Gorda, California, will already be closed to commercial fishing when this action must take place. Therefore, the season between Cape Falcon and Cape Arago, Oregon, must be closed for three days to evaluate coho salmon landings.

Consequently, NOAA issues this notice to close the commercial salmon fishery in the EEZ from Cape Falcon to Cape Arago, from 2400 hours local time, July 14, 1989, to 0001 hours local time, July 18, 1989. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding a closure of the commercial fishery between Cape Falcon and Cape Arago, Oregon. The State of Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 2400 hours local time, July 14, 1989, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the three-day closure of the commercial salmon fishery in the EEZ from Cape Falcon to Cape Arago, Oregon, which is effective from 2400 hours local time, July 14, 1989, to 0001 hours local time, July 18, 1989.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through July 31, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 1989.

Joe P. Clem,

Acting Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-16980 Filed 7-14-89; 5:04 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 81132-9033]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that, by July 14, 1989, 12,000 red king crabs will have been taken as bycatch in the trawl fishery for Pacific cod in the shallow water area between 160°00' and 162°00' W. longitude commonly known as the "Port Moller area." Therefore, the Secretary of Commerce (Secretary) is prohibiting any further fishing with trawl gear in that area. This action is necessary to prevent excessive bycatch of red king crabs in the trawl fishery for groundfish in an area of particular importance to the red king crab stock. This action is intended to carry out the objectives of an emergency interim rule currently in effect to control the bycatch of prohibited species in the trawl fishery for groundfish.

EFFECTIVE DATE: July 14, 1989 at 1800 Alaska Daylight Time.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter (Fishery Management Biologist), NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668, telephone 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary promulgated an emergency interim rule effective March 15, 1989 for a period of 90 days (54 FR 11376, March 20, 1989, corrected at 54 FR 12989, March 29, 1989) to control the bycatch of certain species of crab and Pacific halibut which are prohibited species in the groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) Area. The effective date of this emergency interim rule was extended for an additional 90-day period until

September 11, 1989 (54 FR 25279, June 14, 1989).

The principal effect of the emergency interim rule was to prohibit fishing with trawl gear at any time in that part of the BSAI area that is south of 158°00′ N. latitude and between 160°00′ and 163°00′ W. longitude (§ 675.22(a)). The purpose of this prohibition on trawl fishing is to prevent the excessive bycatch of specified prohibited species while fishing for groundfish species with trawl gear. The area closed is of particular importance to the red king crab stock which is currently at an historically low level of abundance.

The emergency interim rule provides the Secretary with discretion to allow trawl fishing for Pacific cod in that part of the closed area between 160°00′ and 162°00′ W. longitude and south of a straight line connecting the coordinates 56°43′ N. latitude, 160°00′ W. longitude and 56°00′ N. latitude, 162°00′ W. longitude (§ 675.22(b)). Due to the proximity of Port Moller, Alaska, this excepted area has become known as the "Port Moller area." The rule provides that two conditions must be satisfied by trawl fishing operations in the "Port Moller area" if the Secretary allows trawl fishing in the area for Pacific cod. These conditions are (a) that fishing is conducted in full compliance with a scientific data collection and monitoring (observer) program established by the Regional Director, and (b) that the total bycatch of red king crab does not exeed 12,000 animals.

The Secretary exercised this discretion to allow trawl fishing in the otherwise closed "Port Moller area" beginning May 25, 1989. Since that date, 11 fishing vessels have been authorized by the Regional Director to operate trawl gear within this area. Based on data collected under the observer program and analysis of those data by NMFS scientists, the Regional Director has determined that trawl fishing in the "Port Moller area" will have taken 12,000 red king crabs as bycatch on July 14, 1989. Continued fishing with trawl gear in this area will likely result in a red king crab bycatch in excess of 12,000 animals. Therefore, the Secretary, by this notice and direct notification to the authorized fishing operations, withdraws allowance to fish with trawl gear in the "Port Moller area".

Classification

This action is taken under § 675.22 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 14, 1989.

Joseph P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–16979 Filed 7–14–89; 5:04 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-89-083]

Proposed Expenses and Assessment Rate for Marketing Order Covering Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate for the Pear Commodity Committee (Committee) established under Marketing Order 917 for the 1989–90 fiscal year. The proposal is needed for the Committee to incur reasonable operating expenses during the 1989–90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived primarily from assessments on handlers.

DATES: Comments must be received by July 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the docket number, date, and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of California pears under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Marketing Order 917 requires that the assessment rate for a particular fiscal year shall apply to all assessable pears handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of the regulated commodity. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local areas, and are thus in a position to formulate an appropriate budget. The 1989–90 budget was formulated and discussed in public meetings. Thus, all directly affected persons had an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have authority to incur reasonable expenses and have funds to pay their expenses.

The Committee met June 28, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $912,390 and an assessment rate of $0.22 per 36 pound carton or equivalent of assessable pears shipped under M.O. 917. For comparison, 1988–89 fiscal year expenditures were $698,719 and the assessment rate was $0.22 per carton or equivalent.

The major expenditure item this year is $733,800 for advertising, promotion, and food safety compared to $556,737 in 1988–89. The remaining expenses, which are primarily for program administration, are budgeted at about last year's amounts. A total of $10,000 is included for uncollected assessment accounts.

Estimated total income for 1989–90 would amount to $800,060, including assessment income of $786,060 based on shipments of 3,573,000 cartons of fresh pears, $2,000 from the California Department of Food and Agriculture, and $12,000 from other sources such as interest earned on the reserve fund. The reserve fund of $249,095 would be sufficient to cover the anticipated deficit.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for the pear program need to be expedited so the committee has authority to incur reasonable expenses and has sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches and California.

For the reasons set forth in the preamble, it is proposed that § 917.253 be added as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 917.253, is added to read as follows:

§ 917.253 Expenses and assessment rate.

Expenses of $912,390 by the Pear Commodity Committee are authorized, and an assessment rate of $0.22 per 36 pound box or equivalent of assessable pears is established, for the fiscal year ending February 28, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17058 Filed 7–19–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 926

[Docket No. FV–89–078]

California Tokay Grapes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 926 for the 1989–90 fiscal period. Authorization of this budget would allow the Tokay Industry Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 93 and Marketing Order No. 926 (7 CFR Part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of California Tokay grapes under this marketing order, and approximately 20 California Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Tokay Industry Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of grapes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of Tokay grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on March 21 and June 19, 1989, and unanimously recommended a 1989–90 budget of $13,575. This year's budget is $59,550 less than last year's due to decreases in most expense items. The most significant reductions are for market development activities and salaries, which together account for savings of $52,100. The committee also recommended an assessment rate of $0.06 per 23-pound lug, down from last year's rate of $0.175. This rate, when applied to anticipated shipments of 200,000 lugs, would yield $12,000 in assessment revenue which, when added to $1,575 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989 shipping season begins in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Tokay grapes handled during the fiscal period. In addition, handlers are aware of this action which was recommended

by the committee at public meetings. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 926

Marketing agreements and orders, Tokay grapes (California).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 926 be amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new section 926–228 is added to read as follows:

§ 926.228 Expenses and assessment rate.

Expenses of $13,575 by the Tokay Industry Committee are authorized and an assessment rate of $0.06 per 23-pound container of grapes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17057 Filed 7–19–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 948

[Docket No. FV–89–073]

Irish Potatoes Grown in Colorado Area II; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 948 for the 1989–90 fiscal period. Authorization of this budget would enable the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by July 31, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948) regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Colorado Area II potatoes under this marketing order, and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Colorado Area II potatoes. They are familiar with the committee's needs and the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directed affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 15, 1989, and unanimously recommended a 1989–90 budget of $50,477 and an assessment rate of $0.004 per hundredweight. The proposed assessment rate is up from last year's rate of $0.0035. The proposed budget is $6,925 more than last year's due to increases in expenditures for additional staff, compliance, employee benefits, insurance and office expenses. The recommended assessment rate, when applied to anticipated fresh market potato shipments of 11,800,000 hundredweight, would yield $47,200 in assessment revenue which, when added to $3,277 from reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1989–90 fiscal period begins on September 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a

public meeting. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.203 is added to read as follows:

§ 948.203 Expenses and assessment rate.

Expenses of $50,477 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.004 per hundredweight of potatoes is established for the fiscal period ending August 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: July 17, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17059 Filed 7–19–89; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1446

[Amdt. 4]

Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops

AGENCY: Commodity Credit Corporation, USDA

ACTION: Proposed rule.

SUMMARY: This notice proposes amending regulations for the 1986–90 crops of peanuts codified in 7 CFR Part 1446 with regard to the "shrink" adjustment for handlers operating under the nonphysical supervision provisions of the regulations. This rule proposes, for the 1989 and 1990 crops, to allow a "shrink" adjustment for the export obligation for such handlers with respect to "contract additional peanuts" of 4.0 percent if the handler agrees to abide by restrictions on handling and use of certain "other edible quality" (OEQ) peanuts as may be imposed by the Executive Vice President of the Commodity Credit Corporation to comport with common industry practice. Handlers choosing nonphysical supervision who do not agree to restrictions on use or who do not comply with the agreed-to restricted use will be allowed a 0.5 percent shrink adjustment.

DATES: To be assured of consideration, comments must be submitted so as to be received on or before August 10, 1989.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Peanut Operations Branch, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone 202–382–0152.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, Federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under OMB Number 0560–0024.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and County Officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule would amend, for the 1989 and 1990 peanut crops, provisions of 7 CFR 1446.138. The 1989 crop marketing year runs from August 1, 1989, through July 31, 1990. So that the final rule may allow, to the extent practicable, for uniform 1989 crop marketing, it has been determined that the comment period for this proposed rule should be limited to 21 days.

Background

The regulations at 7 CFR 1446.126 permit a peanut handler to choose between "physical" and "nonphysical" supervision for disposition of contract additional peanuts. For handlers choosing nonphysical supervision, the regulations at 7 CFR 1446.138 provide a "shrink" allowance for determining the handler's export obligation with respect to contract additional peanuts. For handlers operating under physical supervision, the regulations at 7 CFR 1446.130 permit a shrink adjustment ranging from 3.0 to 4.0 percent, depending on the date of delivery from storage and on the type of peanuts, to compensate for the loss in value due to "shrink" (loss of moisture, breakage and other damage) during commingled storage of contract additional, loan, and quota commercial peanuts. Subject to certain restrictions, when the nonphysical supervision provision was added for the 1986 through 1990 crops handlers were no longer required to handle, export, or crush lots identified as contract additional peanuts under physical supervision. For a handler operating under nonphysical supervision, the handler's export obligation is established based on the total kernel content (TKC) of the peanuts purchased as contract additional peanuts. The TKC export obligation is established at time of purchase when the peanuts are delivered to a handler operating under nonphysical supervision as opposed to when the peanuts are graded out of

storage as is the case for physical supervision. The TKC export obligation is broken out by kernel type for sound mature kernels (SMK), sound split (SS) kernels, and all other (AO) kernels. The provisions of the Agricultural Adjustment Act of 1938 have a "built in" shrink allowance for nonphysical supervision. The statute provides in part for "shrink" by allowing the export obligation for SS kernels to be double the incoming SS's and for the SMK obligation to be reduced by the amount of SS kernels purchased. As a result of switching to a TKC basis, handlers were able to recover from their AO kernels a portion of their "shrink" loss by substituting certain kernels. This recovery was in addition to the 0.5 shrink allowance previously provided for by regulation and to the inherent allowance permitted by the statutory allowance for increases in SS kernels and decreases in SMK's. The recovery from AO kernels was accomplished by exporting lower quality peanuts that were purchased as quota peanuts and substituting into the domestic edible market the OEQ grade of peanuts from the AO group of contract additional peanuts that were otherwise eligible, under standards of the Peanut Administrative Committee (PAC), for use in domestic edible markets. A handler could thus sell into the edible market OEQ peanuts purchased as contract additional AO kernels and replace them with an equal quantity of lower valued non-edible (oilstock) peanuts from stocks of quota commercial peanuts. Oilstock peanuts include broken and damaged kernels and, to a lesser extent, loose shelled kernels (LSK's) found in farmers stock peanuts. Such oilstock peanuts can be purchased from producers for prices as low as 7 cents per pound. The amount of "gain" in value which could thus be obtained by placing contract additional OEQ peanuts into the domestic food market was not constant but would depend on such factors as the quantity of OEQ peanuts found in the peanuts purchased as contract additional peanuts, the contract price for additional peanuts, and the market price for domestic edible use peanuts.

In 1988, the PAC, a private industry standards group, made changes in the procedures governing its members to eliminate the OEQ grade, thereby eliminating the sale of these peanuts for edible use and reducing the recoverable value available to be used to offset actual value that might be lost due to commingled storage. As a result of this change, the Department adjusted the "shrink" allowance for handlers choosing nonphysical supervision.

Specifically, from information gathered from the peanut industry, it was estimated that approximately 3 percent of the contract additional peanuts purchased are OEQ kernels, which, because of the PAC changes, could no longer be substituted into the edible market by handlers complying with PAC standards. However, it was also estimated that as much as 50 percent of the OEQ kernels from stocks of additional peanuts could still be recovered for edible use by blending such peanuts into edible grades through splits or permitted allowances for fall-through of certain smaller seed kernels. This would still leave 1.5 percent of the contract additional peanuts available for substitution into the edible market to offset "shrink" in value. Accordingly, an interim rule was published in the **Federal Register** on September 15, 1988 (53 FR 35984) which changed the "shrink" adjustment to 2.0 percent for handlers choosing nonphysical supervision. In other words, the 0.5 percent adjustment allowed by regulations applicable to nonphysical supervision was increased by 1.5 percent.

As a result of the comments to the interim rule, the Department determined that a higher shrink allowance may possibly be justified for crop years after the 1988 crop year and that comments should be sought concerning a shrink adjustment greater than 2.0 percent pending results of a study of actual shrink of stored peanuts. Such a study is under consideration by the Department at this time; however, it is improbable that the results will be available before the marketing of the 1989 crop. The "shrink allowance" can be significant as it can affect the effective market price for contract additional peanuts. If the shrink allowance is set too high, the shrink adjustment could give a handler an undue windfall at the expense of the producers. Also, an overly high allowance can cause losses in price support marketing pools because of sales of additional peanuts into the domestic edible market. Losses not covered by cross-pool compliance, in addition to loss of pool profits for producers, could increase government outlays for the price support program to the extent losses from crushing of CCC quota loan stocks are not covered by producers' profit pools for additional and quota loan peanuts.

To take into account the change in PAC practice on this issue, this rule proposes to amend the regulations to increase the shrink adjustment to 4.0 percent for the 1989 and 1990 crops for those handlers who abide by such restrictions as the Executive Vice President, CCC, may specify regarding the use of smaller kernels and other restrictions as are deemed needed. Such restrictions would include, but not necessarily be limited to, the same restrictions PAC placed on its membership for the 1988 crop year. Handlers, to take advantage of the higher shrink allowance, will make such certifications of use as may be required by the Executive Vice President to insure that the higher shrink allowance is appropriate. Handlers choosing nonphysical supervision, who do not abide by restrictions on use as may be prescribed by the Executive Vice President, CCC, or do not provide the necessary certifications, will continue to receive a 0.5 percent shrink allowance. This proposed rule does not affect the shrink allowance for handlers choosing physical supervision.

Options Considered

Shrink can be greatly influenced by handling practices. The adjustment for shrink was not intended to compensate handlers for improper handling practices. Such practices include excessive conveyor belt speeds or other practices not in compliance with recommended "good management practices" such as those which have been promulgated by the National Peanut Council or are set out in recommendations derived from research conducted by the USDA's Agricultural Research Service, as may apply to proper handling and storage of peanuts.

Consideration of the amount of shrink adjustment that should be allowed for handlers operating under the nonphysical supervision provisions of the regulations will be aided by up-to-date and independently derived indication of shrink. Data derived from independent and disinterested sources may identify whether a portion of the shrink reported by, or experienced by, handlers could be attributed to failure to abide by "good management practices".

In considering the amount of shrink to propose for the 1989 and 1990 crops, the following options have been considered with respect to handlers choosing nonphysical supervision.

Option 1. Allow a 3 percent shrink adjustment. This option, for nonphysical supervision, would establish the shrink adjustment for 1989 and 1990 crops at one percent greater than that permitted for the 1988 crop. This shrink allowance would be 2.5 percent greater than the shrink allowed for handlers not agreeing to restrict the sale of OEQ peanuts into

the domestic edible market. The shrink amount for this option anticipates that a greater amount of value is recovered from the sale of OEQ peanuts into the domestic edible market through blending than is anticipated in options 2 and 3.

This option was not chosen because, in the absence of independent research, a 3 percent shrink allowance may force nonphysical supervision handlers to bear a larger share of shrink loss than could be justified if the non-recoverable shrink exceeds 3 percent and if such excess shrink could not be reduced by strict compliance with "good management practices".

Option 2. Allow a 4 percent shrink adjustment (Option selected for proposed rule). This shrink adjustment represents a shrink allowance of about one-half percent greater than the shrink allowance traditionally used for physical supervision. Although the TKC export obligation for nonphysically supervised peanuts and the "value" obligation for physically supervised peanuts are both established at the time the peanuts are purchased, the cutoff points for shrink consideration are considerably different. Under physical supervision, the export obligation is effectively accounted for at the time peanuts are graded out of commingled storage; at that time, the value of the peanuts removed from the warehouse must be equal to the value of the additional peanuts placed in commingled storage, less a 3.0–4.0 percent adjustment for shrink. This adjustment, for physical supervision, accounts for the shrink during the period from the date the peanuts were delivered into commingled storage until the date peanuts were graded out of commingled storage as additional peanuts. Subsequent to grading the peanuts out of storage the peanuts are shelled, crushed, or otherwise handled and processed as additional peanuts under physical supervision of the area association. Since further handling, processing, and exportation of the peanuts is under physical supervision and export credit is earned on a lot-by-lot basis, an allowance for shrinkage that occurs after the date the peanuts are removed from storage is unnecessary. On the other hand, for nonphysically supervised peanuts, the export poundage obligation is established when the peanuts are delivered to the handler, and the accounting for the satisfaction of the export obligation is made from evidence submitted to prove export. Therefore, for nonphysically supervised peanuts, significantly more handling of the peanuts may occur before export credit is determined than occurs for peanuts under physical supervision. The additional handling may result in additional shrink for nonphysical supervision as compared to the shrink for physical supervision.

The proposed 4.0 shrink also represents an amount 3.5 percent above the adjustment allowed nonphysically supervised handlers who do not comply with standards posed by the Executive Vice President, CCC, which would take into account whether OEQ contract additional peanuts are placed into the domestic edible market. It is estimated that there are approximately 60 pounds of OEQ kernels in every ton of farmers stock peanuts (approximately 1,300 pounds, shelled basis) or about 4.5 percent. This option represents less recovery of value through blending than was considered in option 1, but more than in option 3.

Option 2 was selected as the proposed option on the basis that a portion of the quantity of OEQ peanuts may still, through blending, be used to recover value. Also, handlers selecting nonphysical supervision are not required to export peanuts of like value as the peanuts purchased as additional peanuts. Since the export obligation is not based on equivalent value but on equivalent quantities of SMK, SS, and AO kernels, the proposed amount of shrink appears adequate. Although this amount is less than the amount requested by some handlers in response to the previous interim rule, it is within the range requested by other handlers responding to that rule and to other rules issued since the regulations for the 1988 through 1990 crops were issued. Also, to some extent, handlers have control of the amount of shrink through stricter adherence to "good management practices".

Option 3. Allow a 5 percent shrink adjustment. This shrink allowance is 4.5 percent above the adjustment allowed nonphysically supervised handlers who do not agree to withhold peanuts historically classified as OEQ from sale into the edible market. This increase closely approximates the amount of OEQ peanuts estimated to be in a ton of additional peanuts, without consideration of management practices and the recovery of a portion of the lost value by blending.

This option was not selected because it ignores the recoverable value through blending and because of the absence of reliable statistics about industry adherence to "good handling practices". Also, to the extent the shrink allowance considered in this option could cause displacement of quota peanuts, there is the risk of losses in producer marketing pools and exposure of CCC to increased budget outlays.

Request for Comments

Public comments are requested with respect to the amount of shrink adjustment that should be allowed handlers operating under nonphysical supervision when determining whether such handlers have properly accounted for disposition of contract additional peanuts. While a 4.0 percent shrink allowance is proposed, the final rule may adopt a different shrink allowance. All timely submitted comments will be considered. Documentation of the basis for any recommendation would be most helpful.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouse.

Proposed Rule

PART 1446—[AMENDED]

For the reasons set out in the preamble, it is proposed to amend 7 CFR Part 1446, Subpart—Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops, as follows:

1. The authority citation for the subpart continues to read as follows:

Authority: 7 U.S.C. 1359, 1375, 1421 *et. seq.;* 15 U.S.C. 714 *et seq.*

2. Section 1446.138 is proposed to be amended by deleting in the heading and text of paragraph (b) the words "and subsequent crops"; and by adding paragraph (c) to read as follows:

§ 1446.138 Storage requirements under nonphysical supervision.

* * * * *

(c) *Increased shrinkage allowance for the 1989 and 1990 crops.* Notwithstanding the provisions of paragraph (a) of this section, for handlers operating under nonphysical supervision who certify compliance with, and in fact comply with, such additional restrictions on use of various qualities of peanuts as may be specified by the Executive Vice President, CCC, to take into account common industry practices, the shrinkage allowance with respect to the 1989 and 1990 crops will be 4.0 percent of the TKC of the poundage obtained by the handler as contract additional peanuts.

Signed at Washington, DC, on July 14, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-16978 Filed 7-19-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 687]

RIN 1512-AA07

Arroyo Grande Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to establish in San Luis Obispo County, California, an American viticultural area to be known by the appellation "Arroyo Grande Valley." The proposal is the result of a petition filed by the proprietors of two wineries in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by September 5, 1989.

ADDRESS: Send written comments to the Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Ref: Notice No. 687). Copies of this proposal, the petition, the appropriate maps, and the written comments are available for public inspection during normal business hours at the ATF Reading Room, Ariel Rios Federal Building, Room 4412, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, telephone (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Petition

By letter dated July 8, 1987, Don Talley of Talley Vineyards and William S. Greenough of Saucelito Canyon Vineyard filed a petition for the establishment of an "Arroyo Grande Valley" viticultural area in San Luis Obispo County, California.

The Arroyo Grande Valley is approximately 12 miles southeast of the Town of San Luis Obispo. The western leg of the boundary of the proposed viticultural area is about three miles directly east of the Pacific Ocean at Grover City. The proposed area covers approximately 67 square miles. The principal stream in the area is the Arroyo Grande Creek which meanders approximately 12 miles in a southwesterly direction from the spillway of Lopez Lake to the Pacific Ocean. The proposed viticultural area includes substantially all the drainage of the Arroyo Grande Creek including the (upper) Arroyo Grande Creek. Feeding waters into the Arroyo Grande Creek are Tar Spring Creek, Los Berros Creek and Lopez Lake into which flow the (upper) Arroyo Grande Creek, Wittenberg Creek and the creek in Lopez Canyon. Tributaries to the (upper) Arroyo Grande Creek are Phoenix Creek and Saucelito Creek. Within the proposed area are four vineyards totaling 350 acres planted in wine grapes and three bonded wineries. The Edna Valley viticultural area lies immediately to the northwest, the boundary of Los Padres National Forest straddles the north leg of the proposed boundary, the Santa Maria viticultural area lies to the southeast of Arroyo Grande Valley, and the Pacific Ocean communities of Oceano, Grover City and Arroyo Grande abut the southwestern leg of the proposed boundary.

Name and History

The mission at San Luis Obispo farmed the bottomlands in the valley from 1780 until 1842 when the Mexican governor granted "Rancho Arroyo Grande" to Zefarino Carlon. Today, the names "Arroyo Grande" and "Arroyo Grande Valley" can be found on many maps of the area. Commercial vineyards were first planted in 1880 in Saucelito Canyon. The oldest winery in San Luis Obispo County, St. Remy, was also established in Saucelito Canyon in 1880 and produced wines until National Prohibition. The petitioner states that the St. Remy Winery identified itself as being from Arroyo Grande.

Climate

According to the petitioner, the primary characteristic distinguishing Arroyo Grande Valley from neighboring areas is climate. The climate ranges from high Region I to Region II as classified by the University of California system of heat summation.

The climate during the growing season is influenced by the proximity of the Arroyo Grande Valley to the Pacific Ocean. The marine air produces frequent morning and evening fog. This distinguishes the area from inland areas of San Luis Obispo County which are not open to the ocean and have much higher summer temperatures and colder winter temperatures.

The climate during the months of March, April, and May is dominated by a strong onshore air flow bringing cold winds which delay early season growing and fruit set of the grapevines. Because the Arroyo Grand Valley is shielded by the mountain range of the northwest side, the effects of the onshore air flow are moderated.

The valley experiences a long dry moderate summer season and a mild winter season. The average rainfall is 20 inches with about 80 percent of the rain falling between December and March.

The valley floor ranges from sea level to 400 feet above sea level. The proposed viticultural area takes in higher elevations from 300 to 1000 feet in elevation. Present grape plantings are low on hills near the valley floor. During the summer growing season, the sun shines more than 90 percent of the day. Temperatures of 100 degrees F occur nearly every year. Average maximum readings for July are in the 90's and range from about 92 degrees F at higher elevations to 98 degrees F at lower elevations with occasional highs ranging from 110 degrees F to 115 degrees F.

The climate of the area is characterized by cool summer night temperatures, often dropping to 30 degrees below daytime highs.

The Arroyo Grande Valley, as a whole, is slightly warmer than the Santa Maria Valley viticultural area to the south, and somewhat cooler than the Edna Valley and Paso Robles viticultural areas to the north, as determind by the average total number of degree days during the growing season.

The Arroyo Grande Valley usually gets more precipitation each year than the Santa Maria Valley to the south or the Paso Robles area to the north. Edna Valley, to the immediate northwest, usually gets just slightly less precipitation than Arroyo Grande Valley.

The Arroyo Grande Valley is oriented on a northeast-southwest axis whereas both Edna Valley and Santa Maria Valley are oriented on a northwest-southeast axis. This northeast-southwest orientation for Arroyo Grande Valley results in prevailing southwesterly winds in the valley.

Farm Advisor Statement

Mr. John H. Foott, Farm Advisor, Cooperative Extension, University of California, San Luis Obispo County, states that Arroyo Grande Valley is definitely a valley with a climate and terrain different from the Paso Robles and Edna Valley appellations. Arroyo Grande Valley has a southwest orientation to the coast, which gives it some protection from northwest winds. Fog in the summer keeps the valley cool and would designate it as a Region I, according to Mr. Foott. The fog usually burns back in the late morning hours, which gives a gentle warming in the afternoon—ideal for good wine grape quality. Mr. Foott feels that these are the items that distinguish the Arroyo Grande Valley from the other areas of the county.

Statement from Professor Fountain

Mr. H. Paul Fountain, Professor of Viticulture, Crop Science Department, California Polytechnic State University, states that Arroyo Grande Valley has many climatic characteristics similar to the Edna Valley. The area is much different from most of the grape growing areas of San Luis Obispo County, particularly the northern parts of the county including Paso Robles and Shandon. The greatest difference between Arroyo Grande and the Paso Robles/Shandon area is temperature. Paso Robles is much warmer in the summer and colder in the winter. The difference is not only the high and low temperatures during the growing season, but the length of time each day that the maximum temperatures occur.

Mr. Fountain goes on to state that the Arroyo Grande area is west of the Santa Lucia Mountain range and experiences the moderating coastal influences. Early morning fogs (many times up until 9:00 to 10:00 AM) and afternoon coastal onshore breezes during the growing season keep this area much cooler and the maximum temperatures of shorter duration than the grape growing areas east of the Santa Lucia Mountain range. Mr. Fountain believes that the Arroyo Grande Valley should have its own viticultural area because its climate is sufficiently different from the other grape growing areas of San Luis Obispo County.

Soils

Soils within the proposed Arroyo Grande Valley viticultural area are shallow and moderately deep, moderately sloping to extremely steep, and well drained. Some soils on the valley floor are very deep, nearly level to moderately sloping, somewhat poorly drained and well drained silty clay loam and sandy clay loam soils.

Proposed Boundary

The boundary of the proposed Arroyo Grand Valley viticultural area may be found on four United States Geological Survey maps with a scale of 1:24,000. The boundary is described in proposed § 9.129.

Executive Order 12291

It has been determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. § 604(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However,

the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The Table of Sections in Subpart C is amended to add the title of § 9.129 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.129—Arroyo Grande Valley.

Par. 3. Subpart C is amended by adding § 9.129 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.129 Arroyo Grande Valley.

(a) *Name.* The name of the viticultural area described in this section is "Arroyo Grande Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of Arroyo Grande Valley viticultural area are four U.S.G.S. topographical maps of the 1:24,000 scale:

(1) "Arroyo Grande, NE, California", edition of 1965, photorevised 1978.

(2) "Tar Spring Ridge, California", edition of 1967.

(3) "Nipomo, California", edition of 1965.

(4) "Oceano, California", edition of 1965, photorevised 1979.

(c) *Boundary.* The Arroyo Grande Valley viticultural area is located in San Luis Obispo County in the State of California. The boundary is as follows:

(1) Beginning on the "Arroyo Grande" map at the point of intersection of State Route 227 and Corbit Canyon Road in Arroyo Grande Township, the boundary proceeds approximately 0.1 mile, in a northwesterly direction, along the roadway of State Route 227 to the point where State Route 227 intersects with Printz Road in Poorman Canyon in the Santa Manuela land grant;

(2) Then northwesterly, approximately 1.5 miles, along Printz Road to its intersection with Noyes Road in the Santa Manuela land grant;

(3) Then northerly, approximately 1.5 miles, along Noyes road to its intersection with State Route 227 (at vertical control station "BM 452") in the Santa Manuela land grant;

(4) Then in a northeasterly direction in a straight line approximately 1.4 miles to the intersection of Corbit Canyon Road with an unnamed, unimproved road at Verde in the Santa Manuela land grant;

(5) Then approximately 1.9 miles in a generally northeasterly direction, along the meanders of said unimproved road to its easternmost point, prior to the road turning back in a northwesterly direction to its eventual intersection with Biddle Ranch Road;

(6) Then in a northwesterly direction approximately 1.13 miles in a straight line to the summit of an unnamed peak identified as having an elevation of 626 feet in the Santa Manuela land grant;

(7) Then easterly, approximately 0.46 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 635 feet, in the Santa Manuela land grant;

(8) Then east northeasterly, approximately 0.27 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 799 feet, in the Santa Manuela land grant;

(9) Then easterly, approximately 0.78 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 952 feet, in the Santa Manuela land grant;

(10) Then easterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,188 feet, in the southwest corner of section 29, T. 31 S., R. 14 E.;

(11) Then east southeasterly, approximately 0.9 mile in a straight line, to the point at which Upper Arroyo Grande Road crosses the spillway of Lopez Dam in section 32, T. 31 S., R. 14 E. (see "Tar Spring Ridge" map);

(12) Then, in a generally easterly direction, approximately 3.64 miles along Upper Arroyo Grande Road (under construction) to the point where the broken red line for the proposed location of said road diverges in a northerly direction from the light duty roadbed of said road in the Arroyo Grande land grant (north of section 35, T. 31 S., R. 14 E.);

(13) Then, in a generally northerly direction, approximately 2.5 miles, along the broken red line for the proposed location of Upper Arroyo Grande Road to its point of intersection with an unnamed unimproved road (this intersection being 1.2 miles northwest of Ranchita Ranch) in the Arroyo Grande land grant;

(14) From the point of intersection of the proposed location of Upper Arroyo Grande Road and the unnamed unimproved road, the boundary proceeds in a straight line, east northeasterly, approximately 1.8 miles, to the summit of an unnamed peak identified as having an elevation of 1,182 feet, in the northwest corner of section 19, T. 31 S., R. 15 E.;

(15) Then southeasterly, approximately 1.8 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,022 feet, in the northeast corner of section 29, T. 31 S., R. 15 E.;

(16) Then west southwesterly, approximately 0.84 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,310 feet, in the northeast corner of section 30, T. 31 S., R. 15 E.;

(17) Then south southeasterly, approximately 1.46 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,261 feet, in section 32, T. 31 S., R. 15 E.;

(18) Then southeasterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,436 feet, in the northwest corner of section 4, T. 32 S., R. 15 E.;

(19) Then southwesterly, approximately 1.07 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,308 feet, in the Huasna land grant;

(20) Then west northwesterly, approximately 1.50 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,070 feet, along the east border of section 1, T. 32 S., R. 14 E.;

(21) Then south southeasterly, approximately 1.38 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,251 feet, in the Huasna land grant;

(22) Then southwesterly, approximately 0.95 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,458 feet, in the Santa Manuela land grant;

(23) Then southeasterly, approximately 0.8 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,377 feet, in the Huasna land grant;

(24) Then southwesterly, approximately 1.4 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,593 feet, in the Santa Manuela land grant (See "Nipomo" map);

(25) Then southwesterly, approximately 1.1 miles in a straight line, to the jeep trail immediately north of the summit of an unnamed peak identified as having an elevation of 1,549 feet, just north of section 35, T. 32 S., R. 14 E.;

(26) Then northwesterly, approximately 2.73 miles along the jeep trail on Newsom Ridge to the point of intersection of said jeep trail and an unnamed unimproved road (immediately north of section 28, T. 32 S., R. 14 E.);

(27) Then southerly, approximately 1.63 miles along said unimproved road to its intersection with Upper Los Berros No. 2 Road in section 33, T. 32 S., R. 14 E.;

(28) Then southwesterly, approximately 3.27 miles along the stream in Los Berros Canyon (of which approximately 2.0 miles are along Upper Los Berros No. 2 Road) to the point at which U.S. Highway 101 crosses said stream in section 35, T. 12 N., R. 35 W. (See "Oceano" map);

(29) Then across U.S. Highway 101 and continuing in a southwesterly direction approximately .1 mile to Los Berros Arroyo Grande Road;

(30) Then following Los Berros Arroyo Grande Road in generally a northwesterly direction approximately 4 miles until it intersects with Valley Road;

(31) Then following Valley Road in generally a northerly direction approximately 1.2 miles until it intersects with U.S. Highway 101;

(32) Then in a northwesterly direction along U.S. Highway 101 approximately .35 mile until it intersects with State Highway 227;

(33) Then in a northeasterly and then a northerly direction along State Highway 227 approximately 1.4 miles to the point of beginning.

Approved: July 13, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-17034 Filed 7-19-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-015]

RIN 1218-AA59

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of hearing; extension of written comment period.

SUMMARY: This notice schedules an informal public hearing on the proposed standards on electric power generation, transmission, and distribution and on electrical protective equipment, which were published on January 31, 1989 (54 FR 4974). It also extends the period for submission of written comments on the proposed rule.

DATES: The hearing will begin in Washington, DC, on November 28, 1989, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Los Angeles, CA, on December 12, 1989, for the receipt of testimony of parties who prefer to testify at that location. Written comments on the proposed standards and notices of intention to appear must be postmarked by September 30, 1989. Testimony and evidence to be introduced into the record at the hearing must be postmarked by October 30, 1989.

ADDRESSES: The informal public hearing will begin in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing will be reconvened at the Sheraton Plaza La Reina Hotel, 6101 West Century Boulevard, Los Angeles, CA, 90045. (Telephone: 213-642-4867.)

Four copies of written comments must be sent to the Docket Office, Docket No. S-015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202-523-7894.)

Four copies of each notice of intention to appear and testimony and evidence that will be introduced into the hearing record must be sent to: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202-523-8615.)

FOR FURTHER INFORMATION CONTACT: *Hearing:* Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone: 202-523-8615.) For information on how to submit notices of intention to appear, see the section of this notice entitled "Public Participation."

Proposal: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210 (Telephone: 202-523-8148.).

SUPPLEMENTARY INFORMATION: On January 31, 1989, OSHA published a proposed new standard on electric power generation, transmission, and distribution and a proposed revision of the existing regulations on electrical protective equipment for general industry (54 FR 4974). Interested parties were given until May 1, 1989, to submit written comments and to file objections to the proposal and request hearing. The deadline for submitting written comments was subsequently extended to June 1, 1989 (54 FR 18546).

Issues

OSHA received 77 comments, including one hearing request that was received by the May 1 deadline. After this date, five additional requests for a hearing were received. Therefore, OSHA has scheduled a public hearing to begin on November 28, 1989. The hearing is being held to examine all issues raised by the proposal, including the following issues, which were gleaned from the comments:

1. *Grandfathering.* Many commenters requested some form of "grandfathering" (or exemption) for existing electrical protective equipment from the requirements proposed in § 1910.137 and for existing power generation, transmission, and distribution installations from § 1910.269. In their objections, § 1910.269(h)(4) on step bolts and manhole steps, (u)(1) and (v)(3) on access and working space about electric equipment, and (u)(4) and (v)(4) on guarding of live parts were specifically mentioned as requirements that would force extensive modification of existing installations. Public comment is requested on the issue of which requirements cannot be met by existing equipment and installations. Specific instances of non-compliance and alternatives that provide safety

equivalent to the provision in question should be cited, along with cost estimates of bringing equipment and installations into compliance with the proposal and the suggested alternatives.

2. *Performance-oriented requirements.* One of the hearing requests objected to the lack of performance language in some of the proposed regulations. Public comment is invited on the issue of whether any of the proposal's requirements are too specification oriented. Commenters should provide alternative language that will provide flexibility but that will also equally protect employees and be enforceable. Since the proposal is based, in large part, on various national consensus standards, suggested alternatives to the proposed requirements should be accompanied by evidence demonstrating that they are equivalent to or more effective in promoting the safety of employees than the corresponding provisions contained in the proposal.

3. *Preliminary Regulatory Impact Analysis.* Some comments questioned the validity of the Preliminary Regulatory Impact Analysis. They claimed that OSHA did not include the cost of bringing certain installations, such as steps on poles and towers, into compliance with the proposed requirements. Public comment is invited on the issue of whether or not the Preliminary Regulatory Impact Analysis fully accounts for all the costs and benefits associated with the proposal. Additionally, information regarding the changes in costs and benefits associated with any suggested changes to the proposal (e.g., in response to any of the issues in this notice) is welcome and will enable the Agency to assess the impact of the final regulations fully. For example, if a comment suggests elimination of a requirement, the commenter should also estimate the cost savings and decrease in benefits associated with the removal of the provision.

4. *Scope of the standard.* Many of the comments addressed the scope of proposed § 1910.269. The preamble to the proposal had requested comments on the issue of whether or not power generation, transmission, and distribution installations not under the exclusive control of an electric utility should be covered. Comments were received supporting both sides of this issue, but additional public comment is requested. Specifically, advocates of a "utility-only" standard should submit evidence that utility installations and the hazards associated with these installations are truly unique. They should also justify why OSHA should not cover work performed on similar installations not under the exclusive control of electric utilities. Commenters who support extending the scope of the standard should submit information demonstrating the presence of the hazards of electric power generation, transmission, and distribution work and should submit accident and cost information with respect to non-utility installations.

Additionally, one of the hearing requests objected to the manner in which non-electrical hazards were covered in proposed § 1910.269. Therefore, public comment is also requested on the issue of whether or not the non-electrical hazards addressed by the standard are unique to electric power generation, transmission, and distrubtion work and whether or not they should be covered in § 1910.269.

5. *General training.* Proposed §1910.269(a)(2)(i) would require employees to be trained in any safety practices that are necessary for their safety. Several comments argued that this requirement was unreasonable. Public comment is invited on the issue of whether or not employees should receive such training.

6. *Training in cardiopulmonary resuscitation (CPR).* Proposed §1910.269(b)(1) would require persons trained in CPR and first aid to be available for persons working on or with energized electric lines or equipment. Nearly all the comments received from organizations associated with tree-trimming operations opposed the application of §1910.269(b)(1) to line-clearance tree-trimming work. Additionally, other commenters questioned the practicality of the 4-minute maximum response time for fixed work locations proposed in § 1910.269(b)(1)(i)(B). Public comment is invited on the issues of whether or not CPR training is necessary for line-clearance tree trimmers and on whether the 4-minute response time is reasonable and necessary.

7. *Job briefings.* Paragraph (c) of proposed §1910.269 would require job briefings to be conducted before the start of work. Some comments opposed this requirement; others suggested that it be applied to employees working alone; and still others suggested that the application of this requirement be limited to field work or to electrical work only. Public comment is invited on the issues of whether or not the proposed job briefing requirements are appropriate and of what alternatives would provide equivalent protection to employees.

8. *Lockout and tagging.* Many of the comments received in response to the proposal addressed the lockout and tagging provisions contained in §1910.269(d). Some of the comments suggested that the standard be consistent with the generic lockout/tagout standard proposed on April 29, 1988 (53 FR 15496). Others objected to the proposal's recognition of tagging alone as a protective measure, while the electric utility industry groups argued that utilities had excellent "tagout" systems that should not be altered by the standard. These commenters offered suggested changes to the language contained in several of the provisions proposed in §1910.269(d). For example, it was recommended that paragraph (d)(7)(iii) be revised to allow an authorized employee to remove locks or tags from energy isolating devices without restriction. Public comment is invited on the issue of whether or not the lockout and tagging provisions of proposed §1910.269(d) are appropriate. Accident records demonstrating the presence or absence of hazards under existing lockout and tagging programs should also be submitted.

9. *Enclosed spaces.* Several interested parties commented on proposed §1910.269(e) on enclosed spaces. Specifically, they objected to the provisions of paragraph (e)(2), which would require a determination to be made as to the presence of any hazardous temperature, pressure, or atmosphere, and to paragraph (e)(7), which would require the atmosphere of an enclosed space to be tested for the presence of flammable gases and vapors. Public comment is requested on the issue of whether or not the provisions on enclosed space are neessary and reasonable as proposed.

10. *Fall protection.* Paragraph (g)(2)(v) of §1910.269 proposes that employees climbing wood poles without steps use fall protection equipment and that employees working more than 4 feet above the ground on poles, towers, trees, and structures be provided with fall protection. Many comments objecting to these provisions were received. It was claimed that fall protection was not always practical at heights of less than 10 feet, and that it was more hazardous for employees to climb poles with safety straps than for them to climb poles without this protection. (Although protection was not proposed for climbing trees, treetrimming contractors objected to its use for employees climbing trees). Public comment is invited on the issue of whether or not § 1910.269(g)(2)(v) is reasonable and necessary as proposed.

Comments opposing these provisions should present unique situations involving electric power generation, transmission, and distribution installations that preclude the use of fall protection or that present more severe hazards to an employee using fall protection than to one who is not. Accident statistics based on the use and lack of fall protection should also be provided.

11. *Live-line tools.* Several comments suggested that live-line tools (hot sticks) be tested every 1 or 2 years, using the guidelines contained in Institute of Electrical and Electronic Engineers (IEEE) Standard 978–1984, "IEEE Guide for In-Service Maintenance and Electrical Testing of Live-Line Tools." Test voltages given in the IEEE standard are 75 kV/ft for fiberglass and 50 kV/ft for wood; the test voltages are to be applied for 1 minute. Public comment is invited on the issue of whether or not these recommendations are reasonable and necessary for employee safety. Costs of performing the tests should also be submitted.

12. *Clearance distances.* Paragraph (l) of proposed § 1910.269 contains requirements for working on or near exposed energized parts. Two tables (Tables R–6 and R–7) of clearance distances to be maintained from exposed energized electric circuit parts were included in this paragraph. A similar table, Table R–8, is given in paragraph (q), which applies when live-line bare-hand work is being performed. The preamble to the proposal requested public comment on these tables, and several responses on this issue were received. Some commenters suggested that OSHA use the clearance tables in the National Electrical Safety Code (NESC), American National Standard Institute Standard C2–1987. Others urged the Agency to adopt provisions allowing closer clearance distances if protective gaps were installed on power lines. A few suggested including a table of clearances from direct current lines for live-line bare-hand work. Public comment is invited on the issues of: (1) whether the distances in the proposal are appropriate for all types of work or whether the standard should use some other clearance distances, such as those in the NESC; (2) whether or not OSHA should permit the use of protective gaps to perform work that could not otherwise be performed; (3) what types of work necessitate the use of clearances smaller than those proposed in tables R–6 and R–7; and (4) whether or not a table of clearances for DC live-line bare-hand work should be incorporated into the standard.

13. *Location of protective grounds.* Paragraph (n)(3) of § 1910.269 proposed that protective grounds be located at the work location. OSHA received many comments regarding this provision. It was argued that, in some situations, grounding on each side of the location would provide better safety for workers on the ground and that it would therefore be more effective to require whichever method was the safest for the conditions present when work was being performed. Public comment is invited on the issue of whether or not § 1910.269(n)(3) is appropriate as proposed.

14. *Operation of mechanical equipment near overhead power lines.* Proposed § 1910.269(p)(4)(iii) would require mechanical equipment to be insulated or considered energized if it could be taken close to overhead power lines. Some of the commenters objected to this requirement, arguing that grounding would protect employees if the mechanical equipment contacted the power line. Others objected to the requirement that equipment connected to an aerial lift, such as a brush chipper, be considered as energized. They argued that the aerial lift would be insulated and thus would protect employees on the ground. (Using insulated equipment is one of the options listed in the proposal, however.) Public comment is invited on the issues of: (1) Whether or not grounding mechanical equipment protects employees from electric shock if the equipment contacts a power line and, if so, under what conditions (such as voltage levels) and with what grounding techniques will employees be fully protected against electric shock, and (2) what other measures will protect employees from the hazards of operation of mechanical equipment near overhead lines. Calculations of voltage impressed on the grounded equipment and descriptions of cases where employees were protected by grounding when an actual contact occurred should be submitted by commenters supporting this as an option.

15. *Line-clearance tree trimming.* Two provisions contained in proposed § 1910.269(r), line-clearance tree trimming, brought objections from tree-trimming contractors: (1) Paragraph (r)(1)(viii), which prohibits line-clearance tree-trimming operations by other than qualified linemen during storms or other emergency conditions; and (2) paragraph (r)(2)(v), which would require the use of eye and face protection for employees operating brush chippers. The contractors argued that line-clearance tree trimmers are fully trained and qualified to perform their work under emergency conditions and that this has been done safely for many years. They also contended that full face protection is not necessary to protect chipper operators from injury. Public comment is invited on the issue of whether or not these two paragraphs are reasonable and necessary as proposed. Accident information would help demonstrate any claims that existing work practices in the tree-trimming industry adequately protect employees.

16. *Underground installations.* Employee organizations argued that the provisions proposed in § 1910.269(t), underground installations, would inadequately protect employees. They asserted that additional requirements are needed with respect to access (e.g., requiring manlifts for emergency rescue of employees working in manholes more than 8 feet deep), defective cables, and protection in public work areas. Public comment is invited on the issue of whether or not proposed § 1910.269(t) would provide adequate protection for employees working on underground installations.

17. *Definitions of "Authorized employee," "Designated employee," and "Qualified employee."* OSHA received several comments objecting to the definitions of authorized, designated, and qualified employees. The definitions in the proposal are based on the relevant national consensus standards (e.g., American National Standard C2, the National Electrical Safety Code). Public comment is requested on the issue of whether the definitions in proposed § 1910.269(x) are appropriate. Commenters objecting to the proposed definitions should submit evidence demonstrating that their proposed suggested alternatives to the consensus-standards-based definitions would better protect employees.

18. *Two-person crews for field work.* Many employer and employee groups commented on the issue of requiring two employees for work involving energized electric equipment. OSHA did not propose such a requirement, but the Agency will consider evidence supporting or opposing this type of rule. Public comment is invited on the issue of what conditions necessitate the presence of at least two employees. Accidents involving employees working alone should be submitted by those supporting a provision requiring two employees under certain conditions. Evidence that employees injured while working alone will receive prompt medical attention, and ways in which the employer can ensure that such attention is available, should be

submitted by those opposed to such a rule.

19. *Fire-resistant protective clothing.* In the preamble to the proposal, OSHA requested comments on the issue of whether or not to require any type of fire-resistant protective clothing for employees working on electric equipment. While most commenters agreed that certain fabrics, such as polyester, pose a hazard to electrical workers, there was no agreement as to the approach to take to protect employees from this hazard. The Agency is considering a prohibition of any clothing that would substantially increase the severity of any injury received from arcing electric equipment. Public comment is invited on the issue of whether or not this approach is necessary and reasonable for the protection of electrical workers. Evidence should be submitted demonstrating the hazard of clothing made from materials that are highly flammable (at least in a relative sense), and suggestions should be made with respect to which employees need to be protected. OSHA will also consider other approaches to the problem of flammable clothing.

20. *Aerial lifts.* A few of the accident descriptions submitted into the record by OSHA indicated that fatalities are occurring because of the use of aerial lift buckets to move overhead power lines. The employees in the aerial lift were killed when the unrestrained line slid up the bucket and contacted the employee (in two cases) or when current passed through a leakage hole in the bottom of the bucket (in the other case). In order to prevent such accidents, the Agency is considering incorporation of a prohibition on moving or contacting overhead power lines with the bucket of an aerial lift. Public comment is invited on the issue of whether or not such a prohibition is necessary and appropriate and, if not, on what other measures can be taken to prevent such accidents in the future.

21. *Other issues.* Public comment is invited on any other issue related to and within the scope of proposed §§ 1910.137 and 1910.269.

Public Participation

Under section 6(b)(3) of the Occupational Safety and Health Act, and 29 CFR Part 1911, an opportunity to testify orally concerning the issues raised in this notice will be provided at an informal public hearing, which will begin on November 28, 1989, in Washington, DC and on December 5, 1989, in Los Angeles, CA.

Notice of Intention to Appear at Hearing. All persons desiring to participate at the hearing, including those who previously requested that a public hearing be held, must file a notice of intention to appear with Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. (Telephone: 202–523–8615.) Filing of this notice entitles the participant to present information orally and to question witnesses at the hearing. This notice must be postmarked by September 30, 1989.

The notice of intention to appear, which will be available for inspection and copying at the OSHA Docket Office, must contain the following information:

1. The name, address and telephone number of each person to appear;
2. At which hearing site the party wishes to testify;
3. The capacity in which the person will appear;
4. The approximate amount of time required for the presentation;
5. The specific issues that will be addressed;
6. A detailed statement of the position that will be taken with respect to each issue addressed; and
7. Whether the party intends to submit documentary evidence, and a summary of the evidence proposed to be adduced at the hearing.

Filing of Testimony and Evidence Before the Hearing. Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide, in quadruplicate, the complete text of the testimony including all documentary evidence to the OSHA Division of Consumer Affairs. This material must be postmarked by September 30, 1989. This material will be available for inspection and copying at the OSHA Docket Office.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the hearing.

Conduct and Nature of the Hearing. The hearing will commence at 9:30 a.m. on November 28, 1989, in the Auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. At that time any procedural matters relating to the hearing will be resolved. The nature of the informal rule making hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments. Interested persons are invited to submit written comments on the issues raised in the proposal and summarized in this notice. Information that has previously been submitted to this rulemaking remains part of the records and should not be resubmitted. Written comments must be postmarked on or before September 30, 1989, and submitted, in quadruplicate, to the Docket Office, Docket No. S–015, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue,

NW., Washington, DC 20210. The telephone number of the Docket Office is 202–523–7894, and its hours of operation are 8:15 am to 4:45 pm Monday through Friday except Federal holidays. Comments of up to 10 pages may also be transmitted by facsimile to 202–523–5046 or (for FTS) 8–523–5046 provided the original and three copies are sent to the Docket Office thereafter. Additionally, OSHA requests (but does not require) that comments prepared with word-processing equipment be accompanied by an MS–DOS–formatted, 5.25-inch floppy disc containing the comments in a Wordperfect or ASCII file. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing. Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record, and a standard will be issued, or a determination will be made not to issue a rule, based on the entire record of the proceeding, including the written comments and data received from the public.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Secretary of Labor's Order No. 9–83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 14th day of July 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

[FR Doc. 89–17054 Filed 7–19–89; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 123 and 403

[FRL–3617–5]

California Application for EPA Approval of Revisions to the State National Pollution Discharge Elimination System Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: California has requested Environmental Protection Agency (EPA) approval of revisions to the State's approved National Pollutant Discharge Elimination System (NPDES) program. These revisions, if approved by EPA, will allow California to administer the pretreatment program and also to issue NPDES general permits. In addition, California has repealed its previously approved NPDES regulations, which contained requirements for its existing NPDES permit program, and now implements the permit program by incorporating federal NPDES requirements and regulations into State law. The State also has requested approval of this revision. Today's notice provides for a 45 day comment period on California's revisions and an opportunity for interested persons to request a public hearing. EPA's Regional Administrator for Region IX will approve or disapprove the State's application after taking into consideration all comments received.

DATE: Comments must be received on or before September 5,1989. Interested persons may also request a public hearing on California's application. If significant public interest is expressed, EPA will schedule a hearing. In the event a hearing is held, EPA will provide prior notice of the date, time, and location. All requests for a hearing must be submitted on or before expiration of the public comment period.

ADDRESS: Comments should be addressed to William H. Pierce, Chief, Permits Branch, Water Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: William H. Pierce, Chief, Permits Branch, Water Management Division, (415) 974–8110, 215 Fremont Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (CWA) (133 U.S.C. 1251 *et seq.*) requires EPA to administer the NPDES permit program under which the Agency may issue permits for the discharge of pollutants into waters of the United States in accordance with conditions required by the Act. Section 402(b) of the CWA provides for States to assume NPDES permitting responsibilities upon approval by EPA. States also may request authority to issue general permits for similar dischargers with the same effluent limitations. (*See* 40 CFR 122.28.) In addition, under section 54 of the 1977 amendments to the CWA, States requesting NPDES permitting authority, as well as States already approved to administer the NPDES permit program, must also request permitting authority over discharges from federal facilities located within the State and authority to administer the federal pretreatment program governing the introduction of industrial pollutants into publicly owned treatment works (POTWs). (*Cf.* CWA section 402(n).) After EPA approves a State's request for NPDES permit and/or pretreatment authority, the State must thereafter submit any proposed program revisions to EPA for reapproval pursuant to 40 CFR 123.62(b).

On May 14, 1973, California became the first State to be approved by EPA to administer the NPDES permit program. On May 5, 1978, it also became the first State to receive EPA approval to regulate discharges from federal facilities. California has not yet been approved to administer the pretreatment program or issue NPDES general permits.

On March 10, 1988, California submitted an application to EPA for approval of revisions to its approved NPDES program in accordance with 40 CFR 123.62 and 403.10. This application includes a request to add pretreatment and general permit authority to its approved program. It also includes a request for EPA approval of revisions to the State's existing NPDES permit regulations. (California does not have, and has not requested, EPA approval to administer the NPDES and pretreatment programs on Indian lands.) Pursuant to 40 CFR 123.62(b) and 403.10(g), California has submitted in support of its application an Attorney General's Statement (including copies of all applicable State statutes and regulations) certifying that the State has adequate authority to administer the NPDES program being sought, a program description describing how the State intends to carry out its responsibilities, and a proposed EPA/ California Memorandum of Agreement. These documents are revisions of the original copies submitted to EPA when

California sought approval of its existing NPDES permit program.

With respect to California's request for approval of revisions to the State's existing NPDES permit regulations, California has repealed its approved NPDES permit regulations and now proposes to implement the State permit program under State law, which, according to the Attorney General, incorporates by reference all existing and future federal NPDES law and regulations. Specifically, the Attorney General has certified that the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which implements the California NPDES program, incorporates federal NPDES and pretreatment law and regulations prospectively, meaning that future amendments to federal law and regulations are automatically incorporated into State law without the need for amendment of State statutes and regulations. [In support of this authority for prospective incorporation by reference, the Attorney General has cited the Porter-Cologne Act, sections 13160, 13170, 13177, 13385, 13386, and 13387.] The Attorney General also has certified that regulations adopted by the California State Water Resources Control Board, the Statewide NPDES permitting agency, prospectively incorporate EPA regulations applicable to the processing of NPDES applications and issuance of NPDES permits. [The cited State regulations in the Attorney General's Statement are 23 Cal. Admin. Code Sections 2235.1(c), 2235.2, and 2235.4] Such prospective incorporation of federal law and regulations is, according to the Attorney General, authorized under California law and the State's Constitution.

As discussed above, California also has requested authority to issue NPDES general permits and administer the pretreatment program. With respect to general permit authority, EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of waste water which result from similar operations, are of the same type wastes, require the same effluent limitations, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits. If EPA approves California's request for general permit authority, each general permit proposed by the State would be subject to EPA review and approval as provided by 40 CFR 123.44(a)(2). Public notice and opportunity to request a hearing also must be provided for each general permit.

With respect to California's request for pretreatment authority, the State also proposes to implement its pretreatment program under the Porter-Cologne Act provisions which prospectively incorporate federal law and regulations. Under the CWA and EPA regulations at 40 CFR Part 403, the primary objectives of the pretreatment program are to: (1) Prevent the introduction of pollutants into POTWs which will interfere with plant operations and/or disposal or use of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works in unacceptable amounts to receiving waters; and (3) improve the feasibility of recycling and reclaiming municipal and industrial waste water and sludge. In order to be approved, California's request for pretreatment program approval must demonstrate that there is appropriate legal authority, procedures, available funding, and qualified personnel to implement the program as specified in 40 CFR 403.10. Generally, local pretreatment programs will be the primary vehicle for administering, applying, and enforcing California's pretreatment requirements. Currently, 102 such programs have been approved by EPA. Where local programs have not yet been required or developed in California, the State must apply and enforce the pretreatment requirements directly against industries that discharge to POTWs [*e.g.*, 40 CFR 403.10(f)(2)(i)].[1]

If approved by the Regional Administrator, California's pretreatment program, as well as its revised NPDES permit program, will be administered by the California State Water Resources Control Board and nine Regional Water Quality Control Boards. The Regional Administrator's decision to approve or disapprove California's proposed program revisions, including its request for pretreatment and general permit authority, will be based on a determination of whether the proposed program meets the requirements of the Clean Water Act and 40 CFR Parts 122, 123, 124, and 403.

The California submission may be reviewed by the public at the State Water Resources Control Board, 901 "P" Street, 2nd Floor, Sacramento, CA 95814 and U.S. Environmental Protection Agency, Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105. Copies of the submittal may also be obtained for $75.00 from these offices.

[1] According to the California Attorney General, the requirements of the CWA and implementing regulations incorporated by reference by the Porter-Cologne Act, include but are not limited to the pretreatment standards and reporting requirements for IUs of POTWs (for example 40 CFR 403.5, 403.6 and 403.12)

Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The proposed approval of California's NPDES program revisions, including the addition of pretreatment and general permit authority, does not alter the regulatory control over any municipal or industrial category. No new substantive requirements are established by this action. Therefore, since this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not necessary.

Dated: June 26, 1989.

John C. Wise,

Acting Regional Administrator for Region IX.

[FR Doc. 89-16860 Filed 7-19-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3619-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by USX Corporation, Chicago, Illinois, to conditionally exclude certain solid wastes generated at its Southworks Plant, Gary Works facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of

waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until September 5, 1989. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by August 4, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Envrionmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-89-UXEP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. in room M2427, Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Mr. Terry Grist, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On Janaury 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constitutents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of USX's petitioned waste on human health and the environment. Specifically, the model will be used to predict compliance-point concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to

hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off-site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off-site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that, because USX is seeking an upfront delisting (*i.e.*, an exclusion based on data from wastes generated from a laboratory-scale treatment process), ground-water monitoring data collected from the area where the petitioner plans to dispose of the waste is not necessary. Because the petitioned wastestream is not currently generated or disposed of, ground-water data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal site, and, thus, would serve no purpose.

USX petitioned the Agency for an upfront exclusion (for wastes that have not yet been generated) based on a laboratory-scale waste treatment process (*i.e.*, a scaled-down version of a proposed treatment system), untreated waste characteristics, and process descriptions. The Agency is proposing that verification testing requirements (*i.e.*, required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition) be made conditions of the exclusion. These conditions, if the exclusion is granted, will be implemented in order to show that, once on-line, the treatment system can render the waste non-hazardous by meeting the Agency's verification testing limitations (*i.e.*, the maximum allowable levels of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous).

From the evaluation of USX's upfront delisting petition, a list of constituents was developed for the verification testing. Tentative maximum allowable treated waste concentrations for these constituents then were derived by back calculating from the regulatory standards through the use of the proposed fate and transport model for a landfill management scenario. These levels (*i.e.*, "delisting levels") are proposed conditions of the delisting.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating wastes which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will maintain the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made on this petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Petition

USX Corporation, Southworks Plant, Gary Works, Chicago, Illinois

1. Petition for Exclusion

USX Corporation (USX), located in Chicago, Illinois, produces predominantly carbon steel and some alloy grades of steel for use in its rolling mills. USX petitioned the Agency to exclude its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061—"Emission control dust/sludge from the primary production of steel in electric furnaces." The listed constituents of concern for EPA Hazardous Waste No. K061 are cadmium, chromium, and lead. USX petitioned to exclude its waste because it does not believe that the waste will meet the criteria for which it was listed. USX also believes that its treatment process will generate a non-hazardous waste because the constituents of concern, although present in the waste, are in an essentially immobile form. USX further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of USX's petition.

2. Background

USX petitioned the Agency to exclude its CSEAFD on April 13, 1988, and subsequently provided additional information to complete its petition. In support of its petition, USX submitted (1) detailed descriptions of its manufacturing and proposed CHEMFIX waste treatment processes (a commercially available and patented waste treatment process); (2) a list of all the raw materials used in both the manufacturing and treatment processes; (3) results from total constituent analyses for all the EP toxic metals, antimony, beryllium, nickel, thallium, and total cyanide performed on representative samples of the untreated EAF dust; (4) results from the EP toxicity analyses for all the EP toxic metals, antimony, beryllium, nickel, thallium, and total cyanide performed on representative samples of the fully-cured (*i.e.*, hardened) CSEAFD derived from a laboratory-scale treatment system; (5) results from the multiple extraction procedure (MEP) analyses performed on representative samples of the stabilized material (required for stabilized wastes) for all the EP toxic metals (except barium), antimony, beryllium, nickel, and thallium; and (6) results from total oil and grease analyses performed on representative samples of both the untreated EAF dust and the fully-cured CSEAFD. Once

USX's full-scale treatment system is on-line, EPA proposes that USX be required to perform analyses for EP leachate concentrations of all the EP toxic metals, nickel, and cyanide, and total concentrations of reactive sulfide and reactive cyanide on batches of treated waste (see section 6—Verification Testing Conditions).

USX produces predominantly carbon steel and some alloy grades of steel for use in its rolling mills by processing steel scraps in two, 200-ton electric arc furnaces (EAFs). (A third, but smaller, 100-ton EAF is located in the same plant; however, waste from this furnace is not covered by the petition.) A weight of scrap steel from stockpiles of identified grades is selected to give the desired chemical properties in the finished steel. The scrap (or charge) is melted and refined in the furnace when an electric arc surges between three electrodes and scrap. After approximately four hours, the molten steel reaches 3000 °F. The furnace is tilted and the molten steel is poured from the furnace. Table 1 presents the typical types and quantities of materials used annually by USX (based on data compiled by USX for 1983). USX also uses dolomite and burnt lime as fluxing materials and coke, graphite, and phosphorus to adjust the chemical composition of the steel.

TABLE 1—TYPICAL MATERIALS AND QUANTITIES USED ANNUALLY BY USX (1983)

Raw materials	Quantity (tons)
Scrap:	
Iron scrap—broken cast iron ingot molds and stools, and spilled iron from Gary blast furnaces	40,229
Ordinary steel scrap—plates, beams, etc. from demolition of structures, purchased from scrap dealers	341,282
Structural steel scrap—recycle scrap from plant's own structural rolling mill	90,257
Basic oxygen furnance pit scrap—spillings etc. from Gary works basic oxygen furnace operations and steel contained in slag from these operations	317,592
Turnings—waste metal generated at Gary Works and Southworks Plant machine shops	13,776
Nickel-bearing scrap—used to adjust nickel content of certain products	1,557
No. 2 bundle scrap—compressed blocks of scrap materials purchased from scrap dealers	6,308
No. 1 heavy metal scrap—compressed blcoks of higher quality than No. 2 bundles above, purchased from scrap dealers	80,954
Copper armatures—added only occasionally for copper adjustment to certain products	57
Alloying Additions:	
Copper	80.9
Manganese	1,151.1
Chromium	363.4
Silicon	117.1
Molybdenum	30.0
Vanadium	214.1
Columbium	0.8
Titanium	0.3
Nickel	69.2
Aluminum	194.1

The EAFs produce dust (air emissions) during (1) melting of scrap, (2) pouring molten steel, (3) pneumatic injection of additives, (4) oxygen blowing, and (5) meltdown/refining periods. Both EAFs are equipped with a direct furnance offtake system for capture of the primary air emissions and an overhead canopy hood for capture of secondary fugitive emissions. The primary and secondary emissions are cleaned using wet scrubbers. The wastewater from each wet scrubber is partially recycled and the blowdown (effluent) is passed through a thickener for removal of the suspended solids. The effluent from the thickener is sent to the plant's central wastewater treatment system. The sludge from the thickener is dewatered using vacuum filtration and is currently being disposed of off site at USX Corporation's USS Division's Gary Works. The filtration from the vacuum filter is returned to the thickener.

The filter cake (EAF dust) is then mixed in a prescribed ratio with weighed amounts of dry reagent (Portland Cement Type 1)—12 to 15 percent by weight, liquid reagent (Sodium Silicate)—three to five percent by weight, and an activator reagent (Ferrous Sulfate)—two to four percent by weight, in accordance with the CHEMFIX proprietary processing sequence. The CHEMFIX process is defined as a chemical fixation/stabilization technology. This technology stabilizes mobile constituents of concern within a waste by chemical reactions and physical encapsulation. A description of this technology (contained in USX's petition) is provided below.

The CHEMFIX process is based on the use of soluble silicates and silicate setting agents. The combination and proportions of reagents are optimized for each particular waste requiring treatment. The two-part inorganic chemical system reacts with polyvalent metal ions, certain other waste components, and also with itself to produce a chemically and physically stable solid material. The cross-lined three dimensional polymeric matrix displays properties of stability, high melting point, and a rigid, friable texture similar to that of a clay soil. Three general classes of interactions can be described. First are the rapid reactions between soluble silicates and the polyvalent metal ions, producing insoluble metal silicates. Second are reactions between the soluble silicates and the reactive components of the setting agent, immediately producing a gel structure. Third are hydrolysis, hydration, and neutralization reactions between the setting agent and the waste and/or water.

The resulting mixture of waste and reagents will then be discharged to a prepared solidification area in which the gel will continue to set. There are no side streams or discharges resulting from the CHEMFIX process.

USX tested laboratory-scale samples of fully-cured stabilized waste derived from a laboratory treatment unit. Data from this unit were submitted as the basis for an upfront delisting petition. USX plans to construct a fully-enclosed, full-scale mixing and stabilization facility if their laboratory-scale system produces treated wastes that supports an upfront delisting decision. The fully-cured chemically stabilized EAF dust will be disposed of at a non-hazardous dedicated landfill, if the exclusion is granted.

To collect representative samples from vacuum filter presses like USX's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift, etc.). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530–SW–85–003), April 1985.

USX collected eight daily composite samples between July 6, 1986 and July 16, 1986. Each daily composite sample was composed of ten random two-liter grab samples collected from the vacuum filter press. A second set of eight daily composite samples was collected between October 27, 1987 and November 11, 1987. These daily composite samples, comprised of eight random two-liter grab samples, taken one per hour, were collected from the vacuum filter press. USX collected a total of sixteen daily composite samples of the non-stabilized vacuum filter cake.

The sixteen daily composite samples of vacuum filter cake were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of all the EP toxic metals, antimony, beryllium, nickel, thallium, total cyanide, and total oil and grease content. The sixteen daily composite samples of vacuum filter cake were stabilized by CHEMFIX using a laboratory-scale stabilization system. The sixteen fully-cured samples were analyzed for the EP toxicity concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of all the EP toxic metals, antimony, beryllium, nickel, thallium, and total cyanide and total oil and grease content. CHEMFIX then randomly selected four of the sixteen fully-cured samples for MEP analyses. The four samples were analyzed for all the EP toxic metals (except barium), antimony, beryllium, nickel, and thallium. The four samples were also analyzed for total concentrations of reactive cyanide and reactive sulfide, cation exchange capacity, and total alkalinity.

3. Agency Analysis

USX used SW–846 Method Numbers 7041–7841 and 9010 to quantify the total constituent concentrations of all the EP toxic metals, antimony, beryllium, nickel, thallium, and cyanide. USX used SW–846 Method Number 1310 (standard EP) to quantify the leachable concentrations of the EP toxic metals, antimony, beryllium, nickel, and thallium in the fully-cured CSEAFD. USX used SW–846 Method Numbers 3060 and 1310 (using deionized water instead of acetic acid in the cyanide extraction) to quantify the leachable concentrations of hexavalent chromium and cyanide, respectively in the fully-cured CSEAFD. USX used SW–846 Method Number 1320 (MEP) to quantify the leachable concentrations of the EP toxic metals, antimony, beryllium, nickel, and thallium in the fully-cured CSEAFD. USX did not perform MEP extraction analyses for cyanide because the maxium total concentration of cyanide was 0.81 mg/kg; therefore, assuming 100 percent leaching and a 20 fold dilution of the EP/MEP tests (100 grams of sample diluted with 2 liters of extractant) the maximum theoretical EP or MEP concentrations would be 0.04 mg/1. USX stated that due to an oversight, the laboratory used by USX did not perform MEP extraction analyses for barium. Table 2 persents the maximum concentrations obtained from the total constituent analyses performed on the unstabilized material. Tables 3 and 4 present the maximum leachate concentrations obtained from the EP and MEP leachate analyses performed on the stabilized material, respectively.

TABLE 2—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS UNTREATED EAF DUST

Constituents	Total constituent concentrations (mg/kg)
Antimony	40.0
Arsenic	36.0
Beryllium	<0.5
Barium	236
Cadmium	336
Chromium	3,160
Hexavalent Chromium	74.2
Lead	14,600
Mercury	0.2
Selenium	4.8
Silver	53.0
Thallium	<0.1
Nickel	422
Cyanide	0.81
Total oil and grease	1,290
Percent solids	75.4

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

TABLE 3.—MAXIMUM EP LEACHATE CONCENTRATIONS FULLY-CURED CSEAFP

Constituents	EP leachate concentrations (mg/1)
Antimony	<0.1
Arsenic	<0.01
Beryllium	<0.01
Barium	0.4
Cadmium	0.02
Chromium (Total)	0.12
Hexavalent Chromium	[1] 0.16
Lead	0.051
Mercury	<0.001
Selenium	0.012
Silver	<0.05
Thallium	<0.01
Nickel	<0.04
Cyanide	[1] 0.03

<: Denotes that the constituent was not detected at the detection limit specified in the Table.
[1] Deionized water extraction.

The Agency notes that the data presented in Table 3 appear to suggest that hexavalent chromium leaches from the waste at a higher concentration than does total chromium. EPA cautions that a direct comparison between the leachability of hexavalent chromium and total chromium is not possible due to the differences between extraction tests. Specifically, the concentration of leachable hexavalent chromium was determined using an alkaline extraction test, whereas the leachable concentration of total chromium was determined using an acetic acid extraction test. See SW–846 Method Nos. 3060 and 1310, respectively.

TABLE 4—MAXIMUM MEP LEACHATE CONCENTRATIONS FULLY-CURED CSEAFD (MG/1)

Constituents	Days/concentrations								
	1	2	3	4	5	6	7	8	9
Antimony	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1	<0.1
Arsenic	0.02	0.01	0.02	0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Beryllium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Cadmium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01
Chromium	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	0.05	<0.05
Lead	0.025	0.095	0.020	0.095	0.024	0.037	0.022	0.046	0.046
Mercury	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001	<0.001
Nickel	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04	<0.04
Selenium	0.018	0.012	0.006	0.005	<0.005	<0.005	<0.005	<0.005	<0.005
Silver	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	<0.05	
Thallium	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01	<0.01

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

Table 5 presents the maximum total reactive cyanide and total reactive sulfide levels, total alkalinity, cation exchange capacity, flash point, and total oil and grease content of the fully-cured material.

TABLE 5—CHARACTERIZATION OF THE FULLY-CURED MATERIAL

Parameters	Value
Reactive cyanide	3.4 mg/kg
Reactive sulfide	10.0 mg/kg
Total alkalinity	317,000 mg/kg
Cation Exchange capacity.	15.3 meq/100g
Flash point	<100° C
Total oil and grease	1,090 mg/kg

(Analysis for EP or MEP leachable concentrations of sulfide (or reactive sulfide) were not performed since the Agency's level of regulatory concern is based on the total constituent concentration of reactive sulfide.) Detection limits represent the lowest concentrations quantifiable by USX when using the appropriate SW–846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies, and "dirty" waste matrices may cause interferences, thus raising the detection limit.)

USX used Method Number 3–284 ("Procedures for Handling and Chemical Analyses of Sediment and Water Samples," EPA, 1981) to determine that the unstabilized EAF dust and the CSEAFD had maximum oil and grease contents of 1,290 mg/kg (0.129 percent) and 1090 mg/kg (0.1090 percent), respectively. Therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology. (Wastes having more than one percent total oil and grease may either have significant concentrations of the constituent of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample.) See SW–846 method Number 1330. None of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261,.22, and 261.23.

USX submitted a signed certification stating that, based on the current annual waste generation and the laboratory-scale mixing ratio of reagent to EAF dust, the maximum annual generation rate of CSEAFD will be 35,000 tons. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts USX's certified estimate of 35,000 tons.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant USX's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has previously conducted a spot-sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may elect to visit this facility in the future for spot-sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for stabilized wastes and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model, which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of USX's waste.

Specifically, the Agency used the VHS model to evaluate the mobility of all the inorganic constituents (except antimony, beryllium, mercury, nickel, silver, and thallium—see explanation below) from USX's fully-cured CSEAFD waste. The Agency's evaluation, using the CSEAFD volume of 35,000 tons and the maximum EP or MEP leachate concentrations of all the inorganic constituents of concern in the VHS model, generated the compliance-point concentrations shown in Table 5. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, antimony, beryllium, mercury, nickel, silver, and thallium) from USX's waste because they were not detected in either the EP or MEP extract using the appropriate SW–846 analytical test methods (see Tables 3 and 4). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 5—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS LISTED AND NON-LISTED CONSTITUENTS FULLY-CURED CSEAFD

Constituents	Compliance-point concentrations (mg/l)	Levels of regulatory concern (mg/l) [1]
Arsenic	[2] 0.0032	0.05
Barium	[3] 0.0634	1.0
Cadmium	[3] 0.0032	0.01
Chromium (total)	[3] 0.0190	0.05
Lead	[2] 0.0150	0.05
Selenium	[2] 0.0028	0.01
Cyanide	[3] 0.0047	0.70

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.
[2] Obtained from the Multiple Extraction Procedure.
[3] Obtained from the standard Extraction Procedure.

The fully-cured CSEAFD exhibited arsenic, barium, cadmium, chromium, lead, selenium, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making. Additionally, the total constituent concentrations of reactive cyanide and reactive sulfide are below the Agency's interim standards of 250 ppm and 500 ppm, respectively (see Table 4). See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency generally does not separately evaluate levels of hexavalent chromium using the VHS model, rather EPA compares the VHS model results for total chromium to the health-based level established for chromium. However, EPA notes that if the data for hexavalent chromium (see Table 3) were evaluated using the VHS model, the compliance-point concentration (0.0254 mg/l) would also be below the health-based level (0.05 mg/l) for chromium used in delisting decision-making.

The Agency used the MEP test to assess the long-term stability of USX's fully-cured stabilized waste. In this procedure, a sample of USX's fully-cured stabilized waste was ground and passed through a 100x mesh screen in order to facilitate the determination of whether the metals are chemically bound in the waste matrix. Once a sample was prepared, a series of nine synthetic acid rain extractions (*i.e.*, acid leaching) was performed in order to determine whether the metals would leach from the waste matrix over time. The MEP data reported in Table 4 indicate that the fully-cured CSEAFD treatment residue exhibits long-term stability by leaching non-hazardous levels of metals after multiple extractions.

The Agency generally requires that MEP analyses be performed for all the EP toxic metals, nickel, and cyanide. As noted above, USX did not perform MEP analyses for barium. In this particular case, the Agency decided not to request USX to resample and analyze its waste using the MEP for barium because the EP concentration for barium (0.4 mg/l) was significantly below the maximum allowable leachate level obtained from the VHS model analysis (6.3 mg/l). In addition, the Agency believes that if the stabilization process were ineffective at reducing the mobility of barium (and the other metals), the EP leachate concentration of barium (and the other metals) would be higher. Furthermore, the MEP leachable data for all the other metals demonstrates that the stabilization process provides a waste with excellent long-term stability against leaching. Lastly, the Agency recently evaluated data from total, EP and MEP analyses for barium performed on EAF dust which had been stablized using a similar type of stablization process. See 54 FR 11706, March 22, 1989. The subject waste exhibited maximum total, EP, and MEP barium concentrations of 385 mg/kg, 1.48 mg/l, and 0.27 mg/l, respectively. The Agency notes that USX's waste contains less barium and leaches less barium on the EP leach test (see Tables 2 and 3) than the waste discussed in 54 FR 11706. The Agency, therefore, is confident that USX's fully-cured CSEAFD treatment residue would exhibit long-term stability by leaching non-hazardous levels of barium after multiple extractions.

The Agency concluded, after reviewing USX's processes and raw materials list, that no other hazardous constituents of concern are being used by USX, and that no other constituents of concern are likely to be present or formed as reaction products or by-products of USX's waste. On the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

5. Conclusion

The Agency believes that USX's EAF dust filter cake, when stabilized using CHEMFIX's treatment process, is rendered non-hazardous. The Agency believes that the analyzed samples of the fully-cured CSEAFD reflect the day-to-day variations in manufacturing and treatment processes for both the particular grades of scrap used and the particular grades of steel produced during the demonstration period. The Agency, however, believes that the concentration of the constituents of concern can vary depending on the type and quality of scrap metal charged in the steel making process. Therefore, the Agency is proposing to require the petitioner to analyze weekly composites of the CSEAFD in order to ensure that the stabilization process effectively handles the potential variation in constituent concentrations (see section 6—Verification Testing Conditions).

The Agency is proposing that USX's fully-cured CSEAFD waste, if it meets certain verification testing requirements, be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant a conditional exclusion to the USX Steel Corporation, USS Division, Southworks Plant, Gary Works, located in Chicago, Illinois, for its fully-cured chemically stabilized electric arc furnace dust treatment residue described in their petition as EPA Hazardous Waste No. K061. If the proposed rule becomes effective, the fully-cured treatment residue would no longer be subject to regulation under 40 CFR Parts 262 through 268 and the permitting standards of 40 CFR Part 270.

6. Verification Testing Conditions

As stated earlier, the proposed exclusion contains verification testing requirements. If the final exclusion is granted, the petitioner will be required both to verify that the treatment system is on-line and operating as described in the petition, and to show that, once on-line, the treatment system can continue to meet the Agency's verification testing limitations (*i.e.*, "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by USX.

This proposed exclusion is conditional upon the following:

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies.

(A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentration of all the EP toxic metals, nickels, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

The Agency has determined, through its review of similar petitions from the iron and steel industry, that approximately four weeks are required for a facility to train operators and to collect sufficient data to verify that a full-scale stabilization process is operating correctly. The proposed initial testing condition, if promulgated, will require USX to collect daily composite samples during the first four weeks of operation of the full-scale treatment system. The Agency proposed this initial testing condition both to gather data obtained from the full-scale treatment system and to ensure that the full-scale treatment system is closely monitored during the start-up period.

As stated in section 5, the Agency believes that the concentration of the constituents of concern can, over time, vary depending on the type and quality of scrap metal charged in the steel making process. The Agency also believes that the commerical availability of different types of scrap metal are subject to change with time. As a result, in order to ensure that the stabilization process effectively handles the likely variation in constituent concentrations, the Agency is proposing a subsequent testing condition. In this case, the Agency believes that the potential variations in waste composition (*i.e.*, constituent concentrations) resulting from changing scrap, justify the requirement for continual testing of weekly composite samples of CSEAFD. Therefore, the Agency is proposing to require the petitioner to analyze weekly composites of the CSEAFD.

(B) *Subsequent Testing:* USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three

years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois.

The Agency believes that collecting composite samples on a weekly basis will be frequent enough to ensure that the stabilization process is able to handle the potential changes in constituent concentrations because the composition of the scrap charges should not vary from day-to-day. Rather, the Agency expects that the composition of the scrap charges will change gradually since scrap is generally purchased in bulk (*i.e.*, the scrap supply lasts longer than one day).

Future upfront delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the uniformity of the process and of the waste, of the waste volume (including whether there is a fixed volume of waste or an infinite source), and of other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (See *e.g.*, 51 FR 41323, November 14, 1986), may require continuous batch testing.

(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

(3) *Data submittals:* Within one week of system start-up USX must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from condition (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by a signed certification statement attesting to the truth and accuracy of the data submitted.

If made final, the proposed exclusion will only apply to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes (including stabilization reagents) are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site treatment, storage, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et. seq.) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.)

Date: July 12, 1989.

Bruce R. Weddle,

Acting Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
USX Steel Corporation, USS Division, Southworks Plant, Gary Works.	Chicago, Illinois	Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after [insert date of final rule's publication]. This exclusion is conditioned upon the date obtained from USX's full-scale CSEAFD treatment facility because USX's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, USX must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW-846 methodologies. (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treatment batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total concentrations of reactive sulfide and reactive cyanide. USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* USX must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. USX then must analyze each weekly composite sample for all of the EP toxic metals, and nickel. The analytical data, including quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Illinois. (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated until it meets these levels or managed and disposed of in accordance with Subtitle C of RCRA.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) *Data submittals:* Within one week of system start-up USX must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. The data obtained through condition (1)(A) must be submitted to the Section Chief, Variances Section, PSPD/OSW (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. At the Section Chief's request, USX must submit any other analytical data obtained through conditions (1)(A) or (1)(B) within the time period specified by the Section Chief. Failure to submit the required data obtained from conditions (1)(A) or (1)(B) within the specified time period or maintain the required records for the specified time will be considered by the Agency, at its discretion, sufficient basis to revoke USX's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

[FR Doc. 89-17033 Filed 7-19-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6960]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and Proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future

local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
ALABAMA	
Greene County (unincorporated areas)	
Tombigbee River:	
At confluence of Black Warrior River	*95
About 14.9 miles upstream of Gainesville Dam	*131
Maps available for inspection at the County Courthouse, Eutaw, Alabama. Send comments to The Honorable James E. Carter, Chairman, County Commissioners, Greene County, P.O. Box 656, Eutaw, Alabama 35462.	
ALASKA	
Aniak (city), Bethel Borough	
Kuskokwim River:	
Just south of the runway at the middle of the road running parallel to the landing strip	*87
At the intersection of Boundary Avenue and Fourth Street	*89
At the west end of the existing levee	*90
Aniak Slough: Outside and south of the levee	*90
Maps are available for review at the Department of Public Works, Maintenance Office, Boundary Avenue, Aniak, Alaska. Send comments to The Honorable Robert Gibson, Mayor, City of Aniak, P.O. Box 43, Aniak, Alaska 99557.	
Ketchikan (city) Ketchikan Gateway Borough	
Ketchikan Creek:	
Just upstream of Stedman Street (without consideration of backwater from Tongass Narrows coastal flooding)	@14
Just upstream of Lower Park Avenue bridge	@46
Approximately 45 feet downstream of Upper Park Avenue bridge	@60
Just upstream of Fair Street bridge	@72
Approximately 300 feet upstream of Fair Street	@79
Schoenbar Creek:	
Sheetflow flooding at the intersection of Schoenbar Road and Park Lane	#1
Just upstream of the road to Schoenbar Junior High School	@66
At an unnamed road which intersects Schoenbar Road to the east of Valley Park Elementary School	@72
Approximately 900 feet northwest of the intersection of Fairy Chasm Road and Schoenbar Road	@116
Hoadley Creek:	
Approximately 180 feet downstream of Tongass Avenue	@18
Just downstream of Tongass Avenue bridge	@22
Just upstream of Baranof Avenue	@132
Approximately 530 feet north of the intersection of Thatcher Way and Baranof Avenue	@172

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Carlanna Creek:	
At Tongass Avenue bridge (without consideration of backwater from Tongass Narrows coastal flooding)	@14
Approximately 155 feet upstream of Tongass Avenue	@18
At the upstream corporate limits	@44
Maps are available for review at the Department of Public Works, 334 Front Street, Ketchikan, Alaska. Send comments to The Honorable Ted Ferry, Mayor, City of Ketchikan, 334 Front Street, Ketchikan, Alaska 99901.	
ARKANSAS	
Baxter County (unincorporated areas)	
White River:	
Approximately 2,587 feet downstream of confluence of Jenkins Creek	*443
Downstream face of Bull Shoals Dam	*493
North Fork River:	
At confluence with White River	*397
At the downstream face of Norfork Dam	*398
Tributary No. 1:	
At confluence with Tributary No. 2	*612
Approximately 127 feet upstream of County Route 98A	*742
Tributary No. 2:	
Approximately 395 feet downstream of County Route 999	*582
Approximately 100 feet upstream of County Route 988	*724
Walker Creek:	
Approximately 1,267 feet downstream of County Route 27	*741
Approximately 2,265 upstream of confluence of Walker Tributary	*868
Walker Tributary:	
At confluence with Walker Creek	*830
Approximately 755 feet upstream of Spring Lake Avenue	*850
Hicks Creek:	
Approximately 1.16 miles downstream of County Route 55	*561
At the City of Mountain Home corporate limits	*688
Hicks Creek Tributary:	
At confluence with Hicks Creek	*643
Approximately 970 upstream of County Route 54	*749
Dodd Creek:	
At confluence with Hicks Creek	*664
Approximately 1,750 feet downstream of Wade Avenue	*719
Approximately 900 feet downstream of Bucher Drive	*770
Upstream side of State Route 178	*801
Dodd Creek Tributary:	
At the confluence with Dodd Creek	*692
Approximately 260 feet upstream of Pine Tree Lane	*790
Indian Creek:	
At confluence with Hicks Creek	*752
At downstream side of Bradley	*820
Maps available for inspection at the Mountain Home City Hall, Mountain Home, Arkansas.	
Send comments to The Honorable Joe Dillard, Baxter County Judge, Baxter County Courthouse, Mountain Home, Arkansas 72653.	
Salesville (city), Baxter County	
North Fork River: Its entire length within the community	*397
Maps available for inpsection at the City Hall, Salesville, Texas.	
Send comments to The Honorable Sylvester Miller, Mayor of the City of Salesville, Baxter County, P.O. Box 277, Mountain Home, Arkansas 72653.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
GEORGIA	
Monroe (city), Walton County	
Jacks Creek Tributary No. 1:	
About 650 feet upstream of Monroe Dam	*779
Just downstream of East Marable Street	*796
Jacks Creek Tributary No. 2:	
About 2400 feet upstream of mouth	*789
Just downstream of East Spring Street	*841
Jacks Creek Tributary No. 3:	
At mouth	*789
Just downstream of East Spring Street	*820
Grubby Creek:	
About 1200 feet downstream of Poplar Street	*791
Just downstream of Poplar Street	*800
Just upstream of Poplar Street	*805
Just downstream of runway (Monroe-Walton County Airport)	*813
Just upstream of runway (Monroe-Walton County Airport)	*821
About 1600 feet upstream of confluence of Grubby Creek Tributary	*839
Mountain Creek:	
About 0.9 mile upstream of Liberty Hill Church Road	*744
Just downstream of State Route 138	*772
Mountain Creek Tributary No. 1:	
At mouth	*755
Just downstream of Breedlove Drive	*759
Just upstream of Breedlove Drive	*764
About 0.5 mile upstream of West Spring Street	*820
Mountain Creek Tributary No. 2:	
Just upstream of Vine Street	*756
Just downstream of Barrett Street	*852
Maps available for inspection at the City Hall, Monroe, Georgia. Send comments to The Honorable Knox Bell, Mayor, City of Monroe, P.O. Box 1249, Monroe, Georgia 30655.	
Thomas County (unincorporated areas)	
Oquina Creek:	
At mouth	*169
Just downstream of North Pine Tree Boulevard	*186
Good Water Creek:	
At mouth	*177
Just downstream of Georgia-Florida Parkway	*186
Just upstream of Georgia-Florida Parkway	*192
About 1.0 mile upstream of Georgia-Florida Parkway	*201
Gatling Branch:	
About 600 feet upstream of mouth	*134
About 3.2 miles upstream of mouth	*172
Gailing Branch Tributary:	
At mouth	*151
Just downstream of Summer Hill Road	*202
Olive Creek:	
About 550 feet downstream of Cone Road	*148
Just downstream of South Pine Tree Boulevard	*197
Olive Creek Tributary:	
At mouth	*188
About 400 feet downstream of Mill Pond Road	*202
Wards Creek:	
Just upstream of CSX railroad	*176
About 1600 feet upstream of Habersham Road	*247
Maps available for inspection at the Building Inspection Department, 201 Broad Street, Thomasville, Georgia.	
Send comments to The Honorable John Bullock, Chairman, County Commission, Thomas County, P.O. Box 920, Thomasville, Georgia 31799.	
Walton County (unincorporated areas)	
Alcovy River:	
About 1.1 miles upstream of confluence of Beaverdam Creek	*735
About 0.8 mile upstream of State Route 81	*767
Shoal Creek:	
At mouth	*698

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Just upstream of Tom Odom Road	*824
Little Haynes Creek:	
About 1.1 miles downstream of Center Hill Church Road	*712
About 350 feet downstream of Center Hill Church Road	*730
Just upstream of Center Hill Church Road	*743
Just upstream of Green Street	*790
Big Flat Creek:	
About 2,500 feet upstream of Marce Camp Road	*860
Just downstream of Old Zion Cemetery Road	*879
Jacks Creek Tributary 1:	
Just upstream of Monroe Dam	*777
About 600 feet upstream of Monroe Dam	*778
Mountain Creek:	
Just downstream of State Route 138	*773
Just upstream of U.S. Route 78	*788
About 300 feet upstream of U.S. Route 78	*794
About 1,800 feet upstream of U.S. Route 78	*796
Mountain Creek Tributary No. 2:	
Just upstream of Criswell Road	*748
Just downstream of Vine Street	*748
Just upstream of Vine Street	*756
About 2,200 feet upstream of Vine Street	*762

Maps available for inspection at the County Code Office, County Courthouse Annex 2, 100 North Broad Street, Monroe, Georgia.

Send comments to The Honorable William Greeg, Chairman, Board of County Commissioners, Walton County, P.O. Box 585, Monroe, Georgia 30655.

ILLINOIS

Herrin (city), Williamson County

Norge Ditch:	
About 1,400 feet downstream of 8th Street	*405
About 1,350 feet upstream of Clark Trail	*444
Hurricane Creek Tributary:	
About 1,350 feet downstream of Railroad Avenue	*422
About 0.8 mile upstream of Railroad Avenue	*465
17th Street Ditch:	
About 1,600 feet upstream of Union Pacific Railroad	*394
Just downstream of Herrin Avenue	*396
Just upstream of Herrin Avenue	*401
About 1,350 feet upstream of Clark Trail	*468

Maps available for inspection at the Clerk's Desk, City Hall, 300 North Park Avenue, Herrin, Illinois.

Send comments to The Honorable Ed Quaglia, Mayor, City of Herrin, City Hall, 300 North Park Avenue, Herrin, Illinois 62948-3199.

Mound City (city), Pulaski County

Ohio River:	
Within corporate limits	*331

Maps available for inspection at the City Utilities Office, 314 Main Street, Mound City, Illinois.

Send comments to The Honorable Frederick Winkler, Mayor, City of Mound City, 314 Main Street, Mound City, Illinois 62963-1128.

KANSAS

Cimarron (city), Gray County

Arkansas River:	
About 3500 feet downstream of Main Street	*2608
About 1600 feet upstream of Main Street	*2615

Maps available for inspection at the City Hall, 119 South Main Street, Cimarron, Kansas. Send comments to The Honorable T. Leon Brady, Mayor, City of Cimarron, City Hall, 119 South Main Street, Cimarron, Kansas 67835.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
MAINE	
Greene (town), Androscoggin County	
Androscoggin River:	
At downstream corporate limits	*263
At upstream corporate limits	*266
Dead River:	
Approximately 90 feet downstream of Bull Run Road	*248
At confluence of Hooper Brook	*249
Hooper Brook:	
At confluence with Dead River	*249
At upstream corporate limits	*319
Hooper Brook Tributary:	
At confluence with Hooper Brook	*261
Approximately 80 feet upstream of U.S. Route 202 and State Routes 11 and 100	*277
Stetson Brook:	
At downstream corporate limits	*244
Approximately 70 feet upstream of Sullivan Road	*273
East Branch Stetson Brook:	
At confluence with Stetson Brook	*265
Approximately 55 feet upstream of Sullivan Road	*274

Maps available for inspection at the Town Office, Greene, Maine.

Send comments to The Honorable Peter Brockway, Manager of the Town of Greene, Androscoggin County, Town Office, P.O. Box 1300, Greene, Maine 04236.

Mechanic Falls (town), Androscoggin County

Little Androscoggin River:	
At downstream corporate limits	*246
At upstream corporate limits	*300
Bog Brook:	
At confluence with Little Androscoggin River	*249
At confluence with Gardner Brook	*250

Maps available for inspection at the Town Office, 90 Lewiston Street, Mechanic Falls, Maine.

Send comments to The Honorable Harvard Urquehart, Mechanic Falls Town Manager, Androscoggin County, Town Office, 90 Lewiston Street, Mechanic Falls, Maine 04256.

Minot (town), Androscoggin County

Little Androscoggin River:	
At downstream corporate limits	*227
Approximately 2,700 feet upstream from confluence of Bog Brook	*249
Bog Brook:	
At confluence with Little Androscoggin River	*249
Approximately 675 feet upstream of State Route 124	*308

Maps available for inspection at the Town Hall, Minot, Maine.

Send comments to The Honorable John Gould, Chairman of the Minot Town Planning Board, Androscoggin County, Town Hall, Minot, Maine 04258.

Peru (town), Oxford County

Androscoggin River:	
Downstream corporate limits	*402
Upstream corporate limits	*419
Worthley Pond: Entire shoreline within community	*577

Maps available for inspection at the Town Office, Peru, Maine.

Send comments to The Honorable Dennis Newton, Chairman of the Town of Peru Board of Selectmen, Oxford County, P.O. Box 198, West Peru, Maine 04290.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Searsport (town), Waldo County	
Atlantic Ocean:	
Small Tributary, approximately 700 feet west of eastern corporate limits	*11
Shoreline along Searsport Harbor	*25

Maps available for inspection at the Town Office, Searsport, Maine.

Send comments to The Honorable Donald Grant, Manager of the Town of Searsport Waldo County, Town Office, Reservoir Street, Searsport, Maine 04974.

MASSACHUSETTS

Hamilton (town), Essex County

Miles River:	
Approximately 0.65 mile downstream of Gardner Street	*22
Approximately 0.45 mile upstream of Myopia Road	*32
Ipswich River:	
Approximately 700 feet downstream of Highland Street	*19
At upstream corporate limits	*37

Maps available for inspection at the Town Hall, Hamilton, Massachusetts.

Send comments to The Honorable Susan Wiltshire, Chairman of the Town of Hamilton Board of Selectmen, Essex County, Town Hall, P.O. Box 429, Hamilton, Massachusetts 01936.

MICHIGAN

Lapeer (township), Lapeer County

South Branch Flint River:	
About 1.2 miles downstream of Peppermill Road (west of Meyers Road)	*823
Just downstream of Peppermill Road (near dam)	*829
Just upstream of Peppermill Dam	*839
About 0.7 mile upstream of Higley Road	*848
Hunters Creek:	
About 0.6 mile downstream of Turrill Road	*831
Just downstream of Turrill Road	*832
About 0.4 mile upstream of Interstate 69	*839
Mirror Lake Drain: Within community	*839

Maps available for inspection at the Township Hall, 1500 Morris, Lapeer, Michigan.

Send comments to The Honorable Robert E. Sutton, Supervisor, Township of Lapeer, Township Hall, 1500 Morris, Lapper, Michigan 48446.

Mayfield (township), Lapeer County

South Branch Flint River:	
Just upstream of Millville Road	*801
About 1.2 miles upstream of confluence of Rood Lake Drain	*812
Plum Creek Drain:	
At mouth	*802
Just downstream of Farnsworth Road	*810
Rood Lake Drain:	
At mouth	*810
About 0.6 mile upstream of Haines Road	*617

Maps available for inspection at the Township Hall, 1900 North Saginaw, Lapeer, Michigan.

Send comments to The Honorable Chris O. Rauh, Supervisor, Township of Mayfield, Township Hall, 1900 North Saginaw, Lapeer, Michigan 48446.

MISSISSIPPI

Forrest County (unincorporated areas)

Leaf River:	
Just upstream of Sims Road	*131

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
About 9.6 miles upstream of U.S. Highway 11	*168
Bowie River:	
At mouth	*148
About 4.5 miles upstream of Illinois Central Railroad	*185
Greens Creek:	
About 1,000 feet downstream of U.S. Highway 11	*150
About 700 feet upstream of Norfolk Southern Railway	*156
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, 629 Main Street, Hattiesburg, Mississippi. Send comments to The Honorable Lynn Cartlidge, President, Board of Supervisors, Forrest County, County Courthouse, 629 Main Street, Hattiesburg, Mississippi 39401.	
Jones County (unincorporated areas)	
Tallahoma Creek:	
At mouth	*202
About 5.0 miles upstream of U.S. Highway 84 along hydraulic base line	*243
Tallahala Creek:	
About 1.8 miles upstream of State Highway 29	*201
About 1.4 miles upstream of U.S. Highway 11	*241
Rocky Creek:	
About 1.4 miles upstream of mouth	*187
At confluence of Rocky Creek Tributary No. 2	*207
Little Rocky Creek:	
At mouth	*189
About 0.9 mile upstream of Interstate 59	*226
Basie Branch:	
At mouth	*196
About 1.1 miles upstream of mouth	*211
Rocky Creek Tributary No. 2: Within community	*207
Maps available for inspection at the Board of Supervisor's Office, County Courthouse, Laurel, Mississippi.	
Send comments to The Honorable Milton Saul, President, Board of Supervisors, Jones County, County Courthouse, P.O. Box 1468, Laurel, Mississippi 39441.	
Lamar County (unincorporated areas)	
Perkins Creek:	
Just upstream of Oak Grove Road	*280
Just downstream of U.S. Highway 98	*297
Just upstream of dam	*319
Just downstream of Ralph Rals Road	*331
Mixons Creek:	
Just upstream of Interstate 59	*175
Just downstream of Gravel Pit Road	*253
Mixons Creek Tributary:	
At mouth	*175
Just downstream of Illinois Central Railroad	*181
Just upstream of West Fourth Street	*187
About 1600 feet upstream of Westover Drive	*195
Black Creek:	
About 1700 feet downstream of Interstate 59	*209
About 3500 feet upstream of U.S. Highway 98	*290
Little Black Creek:	
About 2.1 miles downstream of Interstate 59	*210
About 4100 feet upstream of U.S. Highway 11	*247
Maps available for inspection at the County Administrator's Office, Purvis, Mississippi.	
Send comments to The Honorable V.E. Douglas, President, Board of Supervisors, Lamar County, P.O. Box 1240, Purvis, Mississippi 39475.	
Lee County (unincorporated areas)	
Coonewah Creek:	
At mouth	*229
About 2000 feet upstream of Brewer Road	*234

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Little Coonewah Creek:	
About 2300 feet downstream of State Highway 6	*296
About 500 feet upstream of State Highway 6	*301
Tributary to Coonewah Creek:	
About 0.5 mile above mouth	*275
About 0.5 mile upstream of Green Tee Road	*301
Kings Creek:	
At mouth	*262
About 0.6 mile upstream of Natchez Trace Parkway	*285
Mud Creek:	
About 1.6 miles above mouth	*266
Just downstream of Barnes Road	*276
Russell Creek:	
About 0.5 mile above mouth	*309
Just upstream of Butler Drive	*339
Sand Creek:	
Just upstream of Lake Lamar Bruce Road	*307
About 0.4 mile upstream of Pea Ridge Road	*318
Town Creek:	
At confluence of Coonewah Creek	*229
About 2,150 feet upstream of U.S. Highway 78	*273
Town Creek Tributary No. 1:	
At mouth	*267
About 325 feet upstream of U.S. Highway 78	*273
Town Creek Tributary No. 2:	
At mouth	*238
Just downstream of Brewer Road	*256
Tulip Creek:	
Just upstream of Burlington Northern railroad	*258
Just downstream of U.S. Highway 78	*292
Maps available for inspection at the Board of Supervisors' Office, The Chancery Clerk Building, Tupelo, Mississippi.	
Send comments to The Honorable Alfred W. Rice, President, Board of Supervisors, Lee County, P.O. Box 1785, Tupelo, Mississippi 38802.	
NEBRASKA	
Schuyler (city), Colfax County	
Shell Creek:	
About 1.4 miles downstream of U.S. Highway 30	*1345
About 2900 feet upstream of U.S. Highway 30	*1355
Shell Creek Right Overbank:	
At mouth	*1346
About 1.3 miles upstream of U.S. Highway 30	*1354
Platte River:	
About 1.8 miles downstream of State Highway 15	*1343
About 0.9 mile upstream of State Highway 15	*1357
Lost Creek:	
About 2.1 miles downstream of State Highway 15	*1343
About 2.1 miles upstream of State Highway 15	*1357
Maps available for inspection at the City Hall, 1020 A Street, Schuyler, Nebraska.	
Send comments to The Honorable Paul Ruprecht, Mayor, City of Schuyler, City Hall, 1020 A Street, Schuyler, Nebraska 68661.	
NORTH CAROLINA	
Edwin (town), Harnett County	
Black River:	
About 0.5 mile downstream of SR 1735	*163
Just downstream of SR 1725	*174
Juniper Creek:	
At mouth	*108
About 0.7 mile upstream of U.S. Route 421	*145
Stewarts Creek:	
At mouth	*124
About 0.4 mile downstream of SR 1725	*155
Cape Fear River:	
About 0.7 mile below State Road 217	*107
At confluence of Upper Little River	*110

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Maps available for inspection at the Town Manager's Office, Municipal Building, Erwin, North Carolina.	
Send comments to The Honorable Richard Hicks, Town Manager, Town of Erwin, P.O. Box 458, Erwin, North Carolina 28339.	
Harnett County (unincorporated areas)	
Black River:	
About 1.5 miles downstream of Long Branch Road	*152
Just downstream of SR 1725	*174
Buies Creek:	
At mouth	*118
Just downstream of SR 1519	*125
Just upstream of SR 1519	*130
Just downstream of U.S. Route 421	*142
Just upstream of State Road 27	*149
Just downstream of SR 1516	*178
West Buies Creek:	
At mouth	*122
Just downstream of Golf Road	*128
Just upstream of Golf Road	*134
About 850 feet upstream of U.S. Route 421	*156
East Buies Creek:	
At mouth	*124
Just upstream of SR 1516	*197
Juniper Creek:	
At mouth	*109
Just downstream of SR 2009	*185
South Prong Anderson Creek:	
About 0.3 mile downstream of SR 1120	*171
About 1.0 mile upstream of SR 1120	*187
Stewarts Creek:	
At mouth	*124
Just upstream of SR 1725	*164
Stony Run:	
At mouth	*161
Just downstream of Interstate 95	*169
Just upstream of Interstate 95	*174
Just downstream of dam	*184
Just upstream of dam	*191
Just upstream of SR 1712	*219
Tributary No. 1:	
About 900 feet above mouth	*133
Just downstream of SR 1124	*158
Just upstream of SR 1124	*164
About 575 feet upstream of SR 1124	*164
Tributary No. 2:	
At mouth	*150
About 1580 feet upstream of Appaloosa Road	*175
Cape Fear River:	
At Southern County Boundary	*103
At Northern County Boundary	*153
Maps available for inspection at the Planning Office, County Courthouse, Lillington, North Carolina.	
Send comments to The Honorable Dallas Pope, County Manager, Harnett County, P.O. Box 759, Lillington, North Carolina 27546.	
OHIO	
Columbiana County (unincorporated areas)	
Longs Run:	
About 2450 feet downstream of East Liverpool	*920
Just downstream of Yeager Drive	*999
North Fork Yellow Creek:	
About 0.8 mile downstream of Haiti Road	*849
About 600 feet upstream of Haiti Road	*866
Middle Fork Little Beaver Creek:	
About 2400 feet downstream of State Route 7	*815
Just downstream of State Route 45	*1015
Ohio River:	
About 2.3 miles downstream of Newell Bridge	*685
About 0.5 mile downstream of Newell Bridge	*696
Maps available for inspection at the County Courthouse, Lisbon, Ohio.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Send comments to The Honorable Don Lowe, Chairman, Board of Commissioners, Columbiana County, County Courthouse, Lisbon, Ohio 44432.	
Garrettsville (village), Portage County	
Eagle Creek:	
Just upstream of Brosius Road	*948
Just downstream of drop structure	*967
Just upstream of drop structure	*985
About 0.7 mile upstream of South Street	*986
Camp Creek:	
At mouth	*949
Just downstream of drop structure	*953
Just upstream of drop structure	*970
About 1.0 mile upstream of Center Street	*980
Maps available for inspection at the Village Hall, 8213 High Street, Garrettsville, Ohio.	
Send comments to The Honorable Milt Pollock, Mayor, Village of Garrettsville, Village Hall, 8213 High Street, Garrettsville, Ohio 44231.	
Jeffersonville (village), Fayette County	
Sugar Creek:	
About 1050 feet downstream of Campground Road	*1037
About 600 feet upstream of Grand Trunk Western Railroad	*1048
Maps available for inspection at the Village Hall, 4 North Main Street, Jeffersonville, Ohio.	
Send comments to The Honorable Bill Michael, Mayor, Village of Jeffersonville, Village Hall, 4 North Main Street, P.O. Box 7, Jeffersonville, Ohio 43128.	
OKLAHOMA	
Kay County (unincorporated areas)	
Arkansas River:	
Approximately 2.0 miles downstream of U.S. Route 60	*922
At Kaw Dam (upstream limit of detailed study)	*951
Tributary W:	
At confluence with Arkansas River	*932
At upstream corporate limits	*939
Salt Fork Arkansas River:	
At downstream side of U.S. Route 77	*959
Approximately 0.74 mile upstream of U.S. Route 77	*960
Chikaskia River:	
Approximately 1.15 miles downstream of the City of Blackwell corporate limits	*1,001
Approximately 0.6 mile upstream of State Route 11	*1,009
Maps available for inspection at the Kay County Courthouse, Newkirk, Oklahoma.	
Send comments to The Honorable John McFadden, Chairman of the Kay County Commissioners, Kay County Courthouse, Newkirk, Oklahoma 74647.	
Seminole County (unincorporated areas)	
Wewoka Creek:	
Approximately 800 feet downstream of confluence of Tributary A	*778
Approximately 200 feet upstream of Strother Avenue	*877
Coon Creek:	
At confluence with Wewoka Creek	*801
Approximately 1,600 feet upstream of Missouri-Kansas-Texas Railroad crossing	*817
Tributary A:	
At confluence with Wewoka Creek	*781
Approximately 200 feet upstream of US Route 270	*841

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Carter Creek:	
At confluence with Wewoka Creek	*848
Approximately 100 feet upstream of Harvey Road	*898
Magnolia Creek:	
At downstream side of Goodhope Road	*892
Approximately 1.1 miles upstream of Goodhope Road	*923
Tributary No. 3 of Carter Creek:	
At confluence with Carter Creek	*892
At downstream Seminole City corporate limits	*939
Tributary No. 3 of Magnolia Creek:	
At downstream side of Goodhope Road	*907
Approximately 1.2 miles upstream of Goodhope Road	*967
Tributary No. 1 of Tributary No. 3 of Magnolia Creek:	
At Seminole City corporate limits	*906
Approximately 1.1 miles upstream of confluence with Tributary No. 3	*923
Sandy Creek:	
Approximately .5 mile upstream of confluence with Wewoka Creek	*791
Upstream side of Missouri-Kansas-Texas Railroad	*795
Tributary No. 1 of Carter Creek:	
Approximately .5 mile upstream of confluence with Carter Creek	*860
Approximately 920 feet upstream of Strother Avenue	*864
Maps available for inspection at the Commissioner's Office, Seminole County Courthouse, Wewoka, Oklahoma.	
Send comments to The Honorable James Tooley, Chairman of the Board of County Commissioners, Seminole County, P.O. Box 457, Seminole County Courthouse, Wewoka, Oklahoma 74884.	
PENNSYLVANIA	
Armstrong (township), Indiana County	
Crooked Creek:	
At corporate limits	*989
At CSX Transportation	*1,006
Maps available for inspection in care of Mr. Donald Harris, Jr., Township Secretary, Shelocta Road, Shelocta, Pennsylvania.	
Send comments to The Honorable Russell Blystone, Chairman of the Township of Armstrong Board of Supervisors, Indiana County, R.D. #3, Shelocta. Pennsylvania 15774.	
Cassandra (borough), Cambria County	
Little Conemaugh River:	
Approximately 250 feet downstream of downstream corporate limits	*1,761
At upstream corporate limits	*1,790
Maps available for inspection at the Borough Building, Portage, Pennsylvania.	
Send comments to The Honorable Steve Shuniak, President of the Cassandra Borough Council, Cambria County, Borough Building, Cassandra, Pennsylvania 15925.	
Clearfield (township), Cambria County	
Chest Creek:	
Approximately 5,450 feet downstream of corporate limits	*1,734
Approximately 4,500 feet upstream of corporate limits	*1,742
Clearfield Creek:	
Approximately 300 feet downstream of T-521	*1,504
Approximately 1,000 feet upstream of T-521	*1,507
Approximately .5 mile downstream of State Route 36	*1,614
State Route 36	*1,622

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Maps available for inspection at the home of Evelyn Preloh, Township Secretary, R.D. #1, Box 265, Patton, Pennsylvania.	
Send comments to The Honorable Charles H. Nagle, Chairman of the Township of Clearfield Board of Supervisors, Cambria County, R.D. #1, Box 105, Dysart. Pennsylvania 16636.	
Coaldale (borough), Bedford County	
Six Mile Run:	
Approximately 410 feet downstream of downstream corporate limits	*1,090
At upstream corporate limits	*1,139
Maps available for inspection at the Six Mile Run Community Center (off Fulton Street), Six Mile Run, Pennsylvania 16679.	
Send comments to The Honorable Louise Hinish, President of the Coaldale Borough Council, Bedford County, Six Mile Run, Pennsylvania 16679.	
East Carroll (township), Cambria County	
Little Chest Creek:	
At downstream corporate limits	*1,766
Approximately 25 fet upstream of the confluence of Unnamed Tributary to Little Chest Creek	*1,795
Unnamed Tributary to Little Chest Creek:	
At confluence with Little Chest Creek	*1,795
Approximately 750 feet upstream of T-527	*1,846
Maps available for inspection at the Township Building, R.D. 1. Carrolltown, Pennsylvania.	
Send comments to The Honorable Robert Hoover, Chairman of the Township of East Carroll Board of Supervisors, Cambria County, R.D. 2, Box 49, Patton, Pennsylvania 16668.	
East Conemaugh (borough), Cambria County	
Little Conemaugh River:	
Approximately 125 feet downstream of downstream corporate limits	*1,211
Approximately 0.6 mile upstream of upstream corporate limits	*1,238
Maps available for inspection at the Borough Building, 355 First Street, Conemaugh, Pennsylvania.	
Send comments to The Honorable Peter Pencola, Mayor of the Borough of East Conemaugh, Cambria County, 322 Green Street, Conemaugh, Pennsylvania 15909.	
East Taylor (township), Cambria County	
Little Conemaugh River:	
Downstream corporate limits (extended)	*1.239
Approximately 3,640 feet upstream of L.R. 11106	*1.387
Maps available for inspection at the Township Building, 1552 William Penn Avenue, Conemaugh, Pennsylvania.	
Send comments to The Honorable Alfred Coleman, Chairman of the Township of East Taylor Board of Supervisors, Cambria County, 1195 William Penn Avenue, Conemaugh, Pennsylvania 15909.	
Ehrenfeld (borough), Cambria County	
Little Conemaugh River:	
At downstream corporate limits	*1,491
At upstream corporate limits	*1,519
Maps available for inspection at the Borough Building, Ehrenfeld, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Send comments to The Honorable Albert Keller, President of the Ehrenfeld Borough Council, Cambria County, Third Street, Ehrenfeld, Pennsylvania 15956.	
Franklin (borough), Cambria County	
Little Conemaugh River:	
Approximately 1,230 feet downstream of State Route 271 (River Avenue)	*1,202
Approximately 3.610 feet upstream of confluence of Clapboard Run	*1,248
Clapboard Run:	
At confluence with Little Conemaugh River	*1,230
At upstream corporate limits	*1,275
Maps available for inspection at the Borough Building, 125 Main Street, Conemaugh, Pennsylvania.	
Send comments to The Honorable Richard McNulty, President of the Borough of Franklin Council, Cambria County, 171 Main Street, Conemaugh, Pennsylvania 15909.	
Geistown (borough), Cambria County	
Sams Run:	
Approximately 155 feet downstream of State Route 756 (Belmont Street)	*1,799
At upstream corporate limits	*1,995
Maps available for inspection at the Geistown Borough Building, 721 East Oakmont Boulevard, Johnstown, Pennsylvania.	
Send comments to The Honorable Mathew Oreskovitch, President of the Geistown Borough Council, Cambria County, 721 East Oakmont Boulevard, Johnstown, Pennsylvania 15904.	
Pine Grove (township), Schuylkill County	
Lower Little Swatara Creek:	
At confluence with Swatara Creek	*506
At upstream corporate limits	*535
Swatara Creek:	
At Interstate Route 81 (southbound)	*488
At upstream corporate limits	*613
Maps available for inspection at the Township Building, Long Stretch Road, Pine Grove, Pennsylvania.	
Send comments to The Honorable John Brown, Chairman of the Township of Pine Grove Board of Supervisors, Schuylkill County, Long Stretch Road, R.D. #4, Box 260-A, Pine Grove, Pennsylvania 17963.	
Portage (borough), Cambria County	
Little Conemaugh River:	
Approximately 50 feet downstream of downstream corporate limits	*1,594
At State Route 53	*1,602
Trout Run:	
At downstream corporate limits	*1,630
Approximately 40 feet upstream of upstream corporate limits	*1,716
Spring Run:	
Approximately 960 feet downstream of Lee Street	*1,601
Approximately 190 feet upstream of CONRAIL	*1,627
Maps available for inspection at the Borough Building, 721 Main Street, Portage, Pennsylvania.	
Send comments to The Honorable John Mutsko, President of the Portage Borough Council, Cambria County, 1020 Gillespie Avenue, Portage, Pennsylvania 15946.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Portage (township), Cambria County	
Little Conemaugh River:	
Approximately 1,800 feet downstream of State Route 53	*1,595
Approximately 1,150 feet upstream of State Route 164	*1,614
Trout Run:	
At downstream corporate limits (at Borough of Portage)	*1,715
Approximately 0.92 mile upstream of Abandoned Railroad	*1,856
Spring Run:	
At downstream corporate limits (at Borough of Portage)	*1,627
Approximately 0.58 mile upstream of L.R. 11071 (Washington Avenue)	*1,677
Maps available for inspection at the Township Building, Portage, Pennsylvania.	
Send comments to The Honorable John Mrozek, Jr., Chairman of the Township of Portage Board of Supervisors, Cambria County, R.D. 1, Box 528, Portage, Pennsylvania 15946.	
Reade (township), Cambria County	
Clearfield Creek:	
Approximately 1,000 feet downstream of T-406	*1,412
Approximately 0.5 mile upstream of confluence of Powell Run	*1,433
Powell Run:	
At confluence with Clearfield Creek	*1,426
Approximately 820 feet upstream of State Route 53	*1,438
Approximately 100 feet downstream of T-562	*2,010
Approximately 500 feet upstream of T-564	*2,089
Maps available for inspection at the Township Building, Route 685, Glasgow, Pennsylvania.	
Send comments to The Honorable Albert Lewis, Chairman of the Township of Reade Board of Supervisors, Cambria County, Box 531, Blandburg, Pennsylvania 16619.	
Scott (township), Lackawanna County	
South Branch Tunkhannock Creek:	
Approximately 430 feet downstream of State Route 438	*1,108
Approximately 2,100 feet upstream of State Route 247	*1,322
Unnamed Tributary to South Branch Tunkhannock Creek:	
At confluence with South Branch Tunkhannock Creek	*1,289
Approximately 1,200 feet upstream of State Route 247	*1,371
Hull Creek:	
At downstream corporate limits	*1,376
Approximately 1,110 feet upstream of State Route 954	*1,511
Maps available for inspection at the Township Building, R.D. #1, Olyphant, Pennsylvania.	
Send comments to The Honorable Dale Noldy, Chairman of the Township of Scott Board of Supervisors, Lackawanna County, R.D. 1, Box 405, Jermyn, Pennsylvania 18433.	
Shamokin (township), Northumberland County	
Shamokin Creek:	
Approximately 340 feet downstream of T-766	*530
At upstream corporate limits	*617
Maps available for inspection at the Shamokin Township Building, Township Road #485, Village of Stonington, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Send comments to The Honorable Robert Ammerman, Chairman of the Township of Shamokin Board of Supervisors, Northumberland County, R.R. 1, Box 379, Paxinos, Pennsylvania 17860.	
South Fork (borough), Cambria County	
Little Conemaugh River:	
At downstream corporate limits	*1,470
At upstream corporate limits	*1,491
South Fork Little Conemaugh River:	
At confluence with Little Conemaugh River	*1,478
At upstream corporate limits	*1,500
Maps available for inspection at the Borough Building, Grant Street, South Fork, Pennsylvania.	
Send comments to The Honorable Clyde Wadsworth, President of the Borough of South Fork Council, Cambria County, 610 Maple Street, South Fork, Pennsylvania 15956.	
Southmont (borough), Cambria County	
Cheney Run:	
Upstream side of Langhorne Avenue	*1,333
Downstream side of Olive Street	*1,505
Maps available for inspection at the Borough Building, 148 Wonder Street, Johnstown, Pennsylvania.	
Send comments to The Honorable Charles Glass, President of the Borough of Southmont Council, Cambria County, 422 State Street, Johnstown, Pennsylvania 15905.	
Summerhill (borough), Cambria County	
Little Conemaugh River:	
Approximately 0.6 mile downstream of downstream corporate limits	*1,522
At upstream corporate limits	*1,537
Laurel Run:	
At confluence with Little Conemaugh River	*1,534
At upstream corporate limits	*1,609
Maps available for inspection at the Borough Building, Summerhill, Pennsylvania.	
Send comments to The Honorable Lawrence Wilburn, President of the Summerhill Borough Council, Cambria County, P.O. Box 293, Summerhill, Pennsylvania 15958.	
Upper Yoder (township), Cambria County	
Stonycreek River:	
At downstream corporate limits	*1,204
Approximately 0.53 mile upstream of Boone Street	*1,213
Mill Creek:	
Approximately 25 feet downstream of corporate limits	*1,234
Approximately 1.04 mile upstream of corporate limits	*1,326
Maps available for inspection at the Township Building, 302 Elm Street, Johnstown, Pennsylvania.	
Send comments to The Honorable Roy Schaffer, Chairman of the Township of Upper Yoder Board of Supervisors, Cambria County, 302 Elm Street, Johnstown, Pennsylvania 15905.	
Vintondale (borough), Cambria County	
South Branch Blacklick Creek:	
At downstream corporate limits	*1,391
Approximately 150 feet upstream of confluence with Bracken Run	*1,421
Shuman Run:	
At confluence with South Branch Blacklick Creek	*1,412

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) @Mean Lower Low Water (MLLW)
Approximately 990 feet above confluence with South Branch Blacklick Creek	*1,465
Bracken Run:	
At confluence with South Branch Blacklick Creek	*1,420
At upstream corporate limits	*1,475
Maps available for inspection at the residence of Mr. Don Kerkes, Secretary/Treasurer of the Borough of Vintondale, Vintondale, Pennsylvania.	
Send comments to The Honorable John J. Malloy, President of the Vintondale Borough Council, Cambria County, Rear Second Street, Vintondale, Pennsylvania 15961.	
Washington (township), Indiana County	
Crooked Creek:	
Approximately 1.0 mile downstream of CSX Transportation	*1,025
Approximately 900 feet upstream of Blue Spruce Road	*1,054
McKee Run:	
At corporate limits of Borough of Creekside	*1,039
Approximately 1,420 feet upstream of corporate limits of Borough of Creekside	*1,040
Sugarcamp Run:	
Approximately 925 feet downstream of State Route 205	*1,059
Approximately 1.22 miles upstream of State Route 954	*1,152
Maps available for inspection at the residence of Connie L. Johnston, Township Secretary, Johnston Road, Creekside, Pennsylvania.	
Send comments to The Honorable Richard Spranke, Chairman of the Township of Washington Board of Supervisors, Indiana County, R.D. #1, Creekside, Pennsylvania 15732.	
West Taylor (township), Cambria County	
Conemaugh River:	
Approximately 500 feet downstream of confluence of Laurel Run	*1,154
At upstream corporate limits	*1,163
Laurel Run:	
At confluence with Conemaugh River	*1,155
Approximately 880 feet upstream of confluence of Red Run	*1,390
Maps available for inspection at the Township Building, West Taylor, Pennsylvania.	
Send comments to The Honorable Harry Santichen, Chairman of the West Taylor Township Board of Supervisors, Cambria County, R.D. #1, Naylor Road, Johnstown, Pennsylvania 15906.	
West Wheatfield (township), Indiana County	
Conemaugh River:	
At downstream corporate limits	*997
At upstream corporate limits	*1,064
Maps available for inspection at the residence of the Jean Yarnal, Township Secretary, U.S. Route 22 (west of intersection 22 and 259), New Florence, Pennsylvania.	
Send comments to The Honorable Donald Baird, Chairman of the Township of West Wheatfield Board of Supervisors, Indiana County, R.D. #1, Blairsville, Pennsylvania 15717.	
White (township), Cambria County	
Clearfield Creek:	
Approximately 1,000 feet downstream of T-406	*1,412
Approximately 2,900 feet upstream of T-561 (Foster Road)	*1,433
Beaverdam Run:	
At confluence with Clearfield Creek	*1,385
Approximately 500 feet upstream of confluence of Strayer Run	*1,385
Strayer Run:	
At confluence with Beaverdam Run	*1,385
Approximately 850 feet upstream of L.R. 11063	*1,406
Dutch Run:	
Approximately 500 feet downstream of L.R. 11052	*1,388
Approximately 0.78 mile upstream of L.R. 11052	*1,401
Maps available for inspection at the residence of Mr. John Gates, R.D. 1, Flinton, Pennsylvania.	
Send comments to The Honorable Richard Black, Chairman of the Township of White Board of Supervisors, Cambria County, R.D. 1, Flinton, Pennsylvania 16640.	
SOUTH DAKOTA	
Lawrence County	
Higgins Gulch:	
Approximately 680 feet downstream of U.S. Forest Service Road	*3,805
Approximately 440 feet upstream of U.S. Forest Service Road	*3,865
Approximately 950 feet upstream of U.S. Forest Service Road	*3,960
Approximately 280 feet upstream of U.S. Forest Service Road	*4,040
Maps are available for review at the Lawrence County Planning and Zoning Administrator's Office, 644 Main, Deadwood, South Dakota.	
TEXAS	
Argyle (city), Denton County	
Graveyard Branch:	
Approximately 700 feet downstream of corporate limits	*623
Approximately 1,300 feet upstream of Old Justin Road	*664
Fincher Branch:	
At Hickory Hills Road	*612
Approximately 800 feet upstream of confluence with Stream FB-1	*630
Stream FB-1:	
Confluence with Fincher Branch	*628
Approximately 70 feet upstream of Harpole Road	*639
Maps available for inspection at the City Hall/Police Station, Highway 377, Argyle, Texas.	
Send comments to The Honorable Norman Thomas, Mayor of the City of Argyle, Denton County, P.O. Box 1035, Argyle, Texas 76226.	
Ballinger (city), Runnels County	
Colorado River:	
Approximately 1,400 feet downstream of confluence of Elm Creek	*1,628
Approximately 700 feet upstream of Atchinson, Topeka, and Santa Fe Railway	*1,630
Elm Creek:	
At confluence with Colorado River	*1,628
At upstream corporate limits	*1,637
Maps available for inspection at the City Hall, 7th and Railroad Avenue, Ballinger, Texas.	
Send comments to The Honorable W. F. Goetz, Mayor of the City of Ballinger, Runnels County, P.O. Box 497, Ballinger, Texas 76821.	
Booker (City), Lipscomb and Ochiltree Counties	
North Fork Kiowa Creek Tributary:	
At North County Road	*2,823
Approximately .5 mile upstream of State Route 15	*2,829
Maps available for inspection at the City Hall, South Main, Booker, Texas.	
Send comments to The Honorable Ralph Maxfield, Mayor of the City of Booker, Lipscomb and Ochiltree Counties, P.O. Box 122, Booker, Texas 79005.	
Madisonville (city), Madison County	
Town Branch:	
Approximately 676 feet downstream of downstream corporate limits	*232
Upstream corporate limits	*266
Town Branch Tributary 1:	
At confluence with Town Branch	*252
Approximately 470 feet upstream of Minden Street	*268
Maps available for inspection at the City Hall, 203 Cottonwood, Madisonville, Texas.	
Send comments to The Honorable James B. Goodrum, Mayor of the City of Madisonville, Madison County, P.O. Box 549, Madisonville, Texas 77844.	
WEST VIRGINIA	
Ronceverte (city), Greenbrier County	
Greenbrier River:	
Approximately 500 feet downstream of the downstream corporate limits	*1,662
Approximately 1.4 miles upstream of upstream Route 219 and State Route 3	*1,674
Maps available for inspection at the City Hall, Main Street, Ronceverte, West Virginia.	
Send comments to The Honorable Eugene Kelley, Mayor of the City of Ronceverte, Greenbrier County, P.O. Box 417, Ronceverte, West Virginia 24970.	
WISCONSIN	
Bell Center (village), Crawford County	
Kickapoo River:	
About 1.2 miles downstream of Town Road	*695
About 1.6 miles upstream of Town Road	*700
Maps available for inspection at Route 2, Gays Mills, Wisconsin.	
Send comments to The Honorable Hallis H. Campbell, Village President, Village of Bell Center, Route 2, Box 24, Gays Mills, Wisconsin 54631.	
Elmwood (village), Pierce County	
Eau Galle River:	
About 4,100 feet downstream of Public Avenue	*828
About 4,800 feet upstream of State Highway 72	*847
Maps available for inspection at the Village Hall, 323 West Winter Avenue, Elmwood, Wisconsin.	
Send comments to The Honorable Larry Feiler, Village President, Village of Elmwood, 323 West Winter Avenue, Elmwood, Wisconsin 54740.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Cotter, City, Baxter County.	White River	Approximately 2.3 miles downstream of U.S. Route 62.	None	*449
			Approximately 2.0 miles upstream of U.S. Route 62.	None	*458

Maps available for inspection at the City Hall, Cotter, Arkansas.

Send comments to The Honorable Louis E. Dennis, Mayor of the City of Cotter, Baxter County, Drawer G, Cotter, Arkansas 72626.

Arkansas	Norfork, City, Baxter County.	North Fork River	At confluence with White River	None	*397
			Approximately 1.3 miles upstream of State Route 5.	None	*397

Maps available for inspection at the City Hall, Norfork, Arkansas.

Send comments to The Honorable Bob Nease, Mayor of the City of Norfork, Baxter County, P.O. Box 32, Norfork, Arkansas 72658.

Connecticut	New Canaan, Town, Fairfield County.	Rippowam River	Approximately 800 feet downstream of Cascade Road.	*227	*226
			Approximately 0.63 mile upstream of State Route 124 (Pinney Road).	*444	*436
		Laurel Brook	Approximately 250 feet upstream of confluence with Rippowam River.	*244	*245
			Upstream side of Laurel Road bridge	*280	*276
		Noroton River	At downstream corporate limits	*115	*119
			Upstream side of State Route 29 (West Road)	*397	*391
		Silvermine River	Approximately 800 feet downstream of dam located downstream of Sawmill Lane.	*122	*123
			Approximately 1,000 feet upstream of Valley Road bridge.	*285	*280
		Five Mile River	Approximately 700 feet downstream of State Route 15.	*142	*141
			Approximately 0.8 mile upstream of Country Club Road.	*412	*405
		Parting Brook	Approximately 450 feet downstream of downstream corporate limits.	None	*246
			Approximately 0.7 mile upstream of Thayer Road.	*396	*393

Maps available for inspection at the Town Office, 77 Main Street, New Canaan, Connecticut.

Send comments to The Honorable Louis Moreno, First Selectman of the Town of New Canaan, Fairfield County, Town Office, 77 Main Street, New Canaan, Connecticut 06840.

Illinois	City of Wilmington, Will County.	Kankakee River	About 0.8 mile downstream of confluence of unnamed tributary.	*529	*536
			About 0.8 mile upstream of Wilmington Dam	*540	*547
		Kankakee River East Channel	Just upstream of confluence with Kankakee River.	*534	*539
			Just upstream of West Street	*537	*543
		Kahler Road Drainage Ditch	At mouth	*537	*543
			About 0.3 mile upstream of Kahler Road	*555	*555
		Forked Creek	At mouth	*533	*539
			About 0.5 mile upstream of Kahler Road	*549	*549

Maps available for inspection at the Clerk's desk, City Hall, 114 North Main Street, Wilmington, Illinois.

Send comments to The Honorable Robert Weidling, Mayor, City of Wilmington, City Hall, 114 North Main Street, P.O. Box 235, Wilmington, Illinois 60481-0235.

Massachusetts	Boston, City, Suffolk County.	Massachusetts Bay	Eastern shoreline of Deer Island approximately 0.61 mile southeast of corporate limits.	*10	*24
			Shoreline at extreme northeastern top of Long Island.	*10	*29
			Southwestern shoreline of Gallops Island	*10	*10
		Boston Harbor	Approximately 400 feet south of Saratoga Street.	*9.5	*10
			At Saratoga Street Bridge	*9.5	*10
			At eastern end of Castle Island	*10	*21
			Approximately 0.11 mile northeast along William J. Day Boulevard from its intersection with East Broadway Street.	*10	*10
		Dorchester Bay	Shoreline at 6 Street (extended)	*10.5	*15
			Approximately 0.11 mile northeast of intersection of Mount Vernon Street and Columbia Road.	*10.5	*10.5
			Shoreline approximately 0.15 mile northeast of intersection of Blair Road and Monticello Avenue.	*10.5	*18
			Shoreline of Savin Hill Cove west of William T. Moreissey Boulevard.	*11.5	*11.5

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
			Shoreline approximately 0.19 mile southwest of Columbia Point.	*11.5	*25
		Boston Inner Harbor	Shoreline of Reserved Channel west of Sumner Street.	*10	*10
			Shoreline at State Street, extended	*10	*14

*100-year Water-Surface Elevation (National Geodetic Vertical Datum).

Maps available for inspection at the Department of the Environment, City Hall, Boston, Massachusetts.

Send comments to The Honorable Raymond L. Flynn, Mayor of the City of Boston, Suffolk County, City Hall, Boston, Massachusetts 02108.

Minnesota	Unincorporated Areas of Blue Earth County.	Blue Earth River	About 1,100 feet downstream of U.S. Highway 169.	*785	*782
			About 1.0 mile upstream of County Highway 33	*804	*792
		Le Sueur River	At mouth	*797	*788
			Just downstream of County Highway 41	*909	*915
		Cobb River	At mouth	None	*826
			Just downstream of County Highway 16	None	*892
		Watonwan River	About 1.4 miles above mouth	*892	*888
			Just downstream of Chicago and North Western.	*911	*916
		Minnesota River	At downstream county boundary	*770	*770
			At upstream county boundary	*803	*804

Maps available for inspection at the Zoning Administrator's Office, Planning and Zoning Office, 202 East Jackson, Mankato, Minnesota.

Send comments to The Honorable Laverne Bergemann, Chairman, Board of Commissioners, Blue Earth County, County Courthouse, 204 South 5th Street, P.O. Box 8608, Mankato, Minnesota 56001.

Mississippi	City of Hattiesburg, Forrest & Lamar Counties.	Bowie River	At mouth	*152	*148
			About 2.0 miles upstream of Interstate 59	*169	*170
		Leaf River	About 3.2 miles downstream of South Main Street.	*140	*139
			About 2,500 feet upstream of U.S. Highway 11	*152	*150
		Gordons Creek	At mouth	*150	*147
			Just downstream of Walnut Street	*150	*150

Maps available for inspection at the Building Inspection Department, City Hall, 200 Forrest Street, Hattiesburg, Mississippi.

Send comments to The Honorable G.D. Williamson, Mayor, City of Hattiesburg, City Hall, 200 Forrest Street, Hattiesburg, Mississippi 39401.

Mississippi	City of Petal, Forrest County.	Greens Creek	At mouth	*153	*150
			Just downstream of North Main Street	*160	*160
		Leaf River	About 2.2 miles downstream of South Main Street.	*140	*140
			About 1.5 miles upstream of U.S. Highway 11	*153	*152
		Unnamed Tributary	At mouth	*147	*146
			Just downstream of South Main Street	*149	*149

Maps available for inspection at the City Hall, 107 West 8th Avenue, Petal, Mississippi.

Send comments to The Honorable Sidney O. Smith, Mayor, City of Petal, City Hall, 107 West 8th Avenue, Petal, Mississippi 39465.

North Carolina	City of Dunn, Harnett County.	Black River	Just downstream of SR 1718	None	*168
			About 500 feet upstream of U.S. Route 421	None	*172
		Stony Run	About 1000 feet upstream of Interstate 95	None	176*
			About 0.3 mile upstream of U.S. Route 301	None	201*

Maps available for inspection at the City Hall, Dunn, North Carolina.

Send comments to The Honorable Carl G. Dean, City Manager, City of Dunn, P.O. Box 1065, Dunn, North Carolina 28334.

North Carolina	Town of Lillington, Harnett County.	Cape Fear River	About 1.2 miles downstream of U.S. Route 421	None	*125
			About 1.0 mile upstream of Norfolk Southern Railway.	None	*131

Maps available for inspection at the City Manager's Office, Town Hall, Lillington, North Carolina.

Send comments to The Honorable Frank Stumpf, Town Manager, Town of Lillington, P.O. Box 296, Lillington, North Carolina 27546.

Oklahoma	Edmond, City, Oklahoma County.	Spring Creek Tributary 1	Approximately 125' upstream of Coltrane Road	None	*1,070
			Approximately 225' upstream of Coltrane Road	None	*1,070
		Chisholm Creek	At Coffee Creek Road Creek	*1,030	*1,035
			At upstream corporate limits	*1,045	*1,054
		Winding Creek	Downstream corporate limit	None	*1,091
			Approximately 0.77 mile upstream of confluence with Santa Fe Creek.	None	*1,126

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
		Covell Creek (formerly Chisholm Creek Tributary 2).	Confluence with Chisholm Creek	*1,038	*1,043
			Approximately 0.65 mile upstream of Covell Road.	None	*1,113
		Trail Creek	Confluence with Santa Fe Creek	None	*1,074
			Upstream side of Santa Fe Avenue	None	*1,119
		Santa Fe Creek (formerly Chisholm Creek Tributary 4).	Approximately 0.26 mile downstream of confluence with Trail Creek.	*1,064	*1,071
			Approximately 50' upstream of Kelly Avenue	None	*1,151
		Mander Creek	Confluence with Santa Fe Creek	None	*1,094
			Upstream side of Kelly Avenue	None	*1,151
		Hunters Creek (formerly Chisholm Creek Tributary 1).	Corporate limits	*1,029	*1,033
			Approximately 3,485' upstream of confluence with Hunters Creek Tributary.	None	*1,120
		Oak Creek	Corporate limits	None	*1,042
			At Kelly Avenue	None	*1,084
		Hunters Creek Tributary	Confluence with Hunters Creek	None	*1,104
			Approximately 2,160' upstream of Coffee Creek Road.	None	*1,124
		Mill Creek	Corporate limits	None	*1,031
			Approximately 70' upstream of Santa Fe Avenue.	None	*1,075
		Pond Creek (formerly Chisholm Creek Tributary 3).	Confluence with Chisholm Creek	*1,040	*1,049
			3,280' upstream of confluence with Chisholm Creek.	*1,045	*1,051
		Willow Creek	Confluence with Santa Fe Creek	None	*1,103
			5,060' upstream of confluence with Santa Fe Creek.	None	*1,137

Maps available for inspection at the City Hall, 100 East First, Edmond, Oklahoma.

Send comments to The Honorable Paul Walters, Mayor of the City of Edmond, Oklahoma County, P.O. Box 2970, 100 East First, Edmond, Oklahoma 73083-2970.

Rhode Island	Newport, City, Newport County.	Atlantic Ocean	Approximately 200 feet southwest of intersection of D. Thomas Road and Ocean Avenue.	*18	*28
			Shoreline at Ledge Road (extended)	*19	*22
			Shoreline at Barclay Road (extended)	*19	*40
			Ocean Avenue, approximately 1,200 feet west of its intersection with Prices Neck Road.	None	#2

Maps available for inspection at the City Hall, Building Inspector's Office, Newport, Rhode Island.

Send comments to The Honorable Frank Edwards, Manager of the City of Newport, Newport County, City Hall, 43 Broadway, Newport, Rhode Island 02840.

South Dakota	City of Deadwood, Lawrence County.	White Wood Creek	Approximately 818 feet upstream of Charles Street.	*4,609	*4,609
			At U.S. Highway 85	None	*4,624
			Approximately 343 feet upstream of U.S. Highway 85 which is located approximately 500 feet downstream of the corporate limits.	None	*4,727

Maps are available for review at the City of Deadwood, City Planner, 3 Siever Street, Deadwood, South Dakota.

Send comments to The Honorable Bruce Oberlander, Mayor, City of Deadwood, P.O. Box G, Deadwood, South Dakota 57732.

South Dakota	Pennington County	Box Elder Creek North Tributary.	Approximately 1,600 feet downstream of Old U.S. Highways 14 and 16.	None	*2,997
	Unincorporated Areas		Just upstream of U.S. Highways 14 and 16	None	*3,004
			Approximately 75 feet upstream of Interstate Highway 90 overpass.	None	*3,029
			Approximately 500 feet upstream of Dam # 2	None	*3,046
			Approximately 3,975 feet upstream of Dam # 2	None	*3,070
		Box Elder Creek Northwest Tributary.	At confluence with Box Elder Creek North Tributary.	None	*3,045
			Approximately 1,600 feet above confluence with Box Elder Creek North Tributary.	None	*3,055
			Approximately 2,950 feet above confluence with Box Elder Creek North Tributary.	None	*3,069

Maps are available for review at the City/School Administration Building, 300 Sixth Street, Rapid City, South Dakota.

Send comments to The Honorable Shirley Alexander, Chairperson, Pennington County Board of Commissioners, County Courthouse, 315 St. Joseph Street, Rapid City, South Dakota 57701.

Wisconsin	Village of Gays Mills, Crawford County.	Kickapoo River	About 1,500 feet downstream of confluence of Hall Branch.	*698	*699
			About 0.85 mile upstream of confluence with Dellamater Hollow Tributary.	*704	*706

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Community Building, Gays Mills, Wisconsin.					
Send comments to The Honorable Kenneth F. Pettit, Village President, Village of Gays Mills, Community Building, P.O. Box 237, Gays Mills, Wisconsin 54631.					
Wisconsin	Village of Soldiers, Grove, Crawford County.	Kickapoo River	About 1,800 feet downstream of confluence of Johnson Valley Creek.	*726	*723
			About 0.5 mile upstream of A Street	*735	*734
		Johnson Valley Creek	At mouth	*726	*724
			About 1.0 mile upstream of mouth	*757	*757
		Baker Creek	At mouth	*731	*729
			Just downstream of Pine Street (near corporate limits).	*780	*780
Maps available for inspection at the Community Building, Soldiers Grove, Wisconsin.					
Send comments to The Honorable S. Robert Peterson, Village President, Village of Soldiers Grove, Community Building, Box 121, Soldiers Grove, Wisconsin 54655.					

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: July 13, 1989.

[FR Doc. 89-16903 Filed 7-19-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 588

[Docket No. 89-08]

Inquiry Concerning the Definitions of United States and Foreign Carriers in the Foreign Shipping Practices Act of 1988

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission had solicited public comment on the definition of United States carrier and foreign carrier for the purposes of the Foreign Shipping Practices Act of 1988 and the Commission's implementing regulations at 46 CFR Part 588, and on the interpretation of the statutory provision identifying foreign carriers who may be subject to sanctions under the Act on the basis of their nationality. The Commission has determined, based on the comments received, not to propose any rule amending its implementing regulations at this time, and is discontinuing this proceeding.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1988, the Commission initiated a proceeding, Docket No. 88-24, to propose a rule implementing the Foreign Shipping Practices Act of 1988 ("1988 Act"). Docket No. 88-24 produced evidence of disagreement and confusion over the definitions of U.S. carrier and foreign carrier as used in the 1988 Act, particularly with respect to who are the U.S. carriers qualifying for protection, and who are the foreign carriers subject to sanctions.

The 1988 Act defines foreign carrier as one "a majority of whose vessels are documented under the laws of a country other than the United States." 46 U.S.C. app. 10002(a)(2). A United States carrier "operates vessels documented under the laws of the United States." 46 U.S.C. app. 10002(a)(5). Thus, under the statute an ocean common carrier which operates some U.S.-flag vessels but an even greater number of foreign-flag vessels could be argued to fit both definitions. Therefore, the Proposed Rule in Docket No. 88-24 added language to the definition of U.S. carrier to clarify that a carrier which meets both definitions shall be considered a foreign carrier.

This language prompted criticism from U.S.-flag carrier interests, who in their comments on the Proposed Rule expressed the view that this interpretation of the definitions was antithetical to Congress' intent. These parties were concerned that a narrow definition of U.S. carrier might disqualify carriers otherwise considered to be U.S. carriers from protections under the 1988 Act by virtue of owning or operating a given number or percentage of foreign-flag vessels. These parties suggested alternative definitions, and also urged that the Commission consider retaining the statutory language in the Commission regulations.

Docket No. 88-24 concluded with a Final Rule which, *inter alia*, adopted the statutory rather than the Proposed Rule definitions of U.S. and foreign carriers. Immediately thereafter, the Commission instituted a separate proceeding, the instant Notice of Inquiry, to solicit comment on whether and how those definitions adopted in the Commission's implementing regulations might be amended to clarify any ambiguity and to enhance the efficacy of the 1988 Act. Noting the suggestions arising from the Proposed Rule in Docket No. 88-24, the Commission stated in the Notice of Inquiry that it is

> amenable to suggested language defining the terms in issue, or standards or criteria to be used to make those determinations. A wide range of comments, including both opinions of previous proposals and new suggestions, will ensure that the Commission reaches an informed and appropriate decision on this issue.

Notice of Inquiry, 54 FR 12662, March 28, 1989.

The Commission additionally sought comment on the interpretation to be given the statutory provision at section 10002(e)(1) of the 1988 Act which states, *inter alia:*

> * * * the Commission shall take such action as it considers necessary and appropriate against any *foreign carrier* that is a contributing cause to, or *whose government* is a contributing cause to, such [adverse] conditions * * * *

(Emphasis added.) The phrase "foreign carrier * * * whose government" is not otherwise defined. The Commission noted:

> The phrase could refer to the national flag a carrier flies, to the country in which the carrier was incorporated, to the citizenship of a majority of its owners, or to other criteria of ownership.

Notice of Inquiry, 54 FR 12662, March 28, 1989. The Commission therefore solicited suggestions for either a precise

definition or a set of criteria to make the appropriate determination.

Comments

Comments were received from three parties—United Shipowners of America ("USA"), American President Lines ("APL") and Sea-Land Service, Inc. ("Sea-Land"). All three urge that the statutory language be retained and that no clarifications or amended definitions be attempted.

Definition of U.S. Carrier

USA recommends that the Commission "exercise flexibility" and treat each definitional issue on a case-by-case basis. USA states that in determining whether a carrier is eligible for protection under the 1988 Act, "the Commission should take into account such factors as (i) totality of a U.S.-flag carrier's U.S.-flag capacity; (ii) the U.S.-flag capacity of the entire corporate entity involved, including related and affiliated companies; and (iii) corporate citizenship * * *."

USA's concern is that clearer definitions could result in disqualification of U.S.-flag carriers from 1988 Act protections, based on number of vessels flagged U.S. versus foreign. It would be "inimical to the purposes of the Act," USA asserts, "to hold that a long-standing U.S.-flag carrier who happened to have more foreign-flag vessels than U.S.- flag vessels not be qualified to take advantage of the statute as a United States carrier."

Sea-Land also argues that "ownership and control" should be the determining factors in identifying U.S. carriers. Flag should not be the determining criterion, Sea-Land contends, and "a U.S. liner operator does not lose its national identity when it uses a mix of U.S. and foreign-flag vessels * * *."

Sea-Land argues that Congress did not intend the Commission to "make a separate redundant determination of which U.S. liner companies qualified" as U.S. carriers. Rather, Congress simply restricted the definition of foreign carrier to prohibit foreign carrier evasion of the 1988 Act via reflagging. No amended definitions are necessary, Sea-Land asserts, but if the Commission does see "immediate need" for such, Sea-Land suggests the use of U.S. citizenship status determined under section 2 of the 1916 Act (46 U.S.C. 802(a)).

APL also supports retaining the statutory U.S. carrier definition adopted in Docket No. 88-24. APL contends that "Congress has contemplated that any operation of a vessel documented under the laws of the United States and engaged in liner operations in the U.S.-foreign commerce is entitled to benefit from the Act's provisions." Thus, it argues, no U.S. liner operators should be excluded by the imposition of new limitations.

APL dismisses the "hypothetical possibility" that foreign carriers might reflag under U.S. law. "The fact that, technically, a foreign carrier might conceivably fit the definition of United States carrier under improbable circumstances," it says, "does not do violence to the Act or its purposes."

Definition of Foreign Carrier

USA urges that in deciding who are "foreign carriers"—*i.e.*, those who are potential subjects of sanctions—a "flexible approach should be taken in determining the link between a foreign carrier and that contributory government." USA notes the following language in the legislative history of the 1988 Act:

> The FMC is authorized to act against a carrier or the vessels of a carrier that is owned or controlled by citizens of the contributory government regardless of whether the carrier's vessels are documented under the law of the contributory government.

H. Rep. No. 100-576, p. 1095. USA urges a broad interpretation of foreign carrier, based on ownership, residence of the vessel owner, citizenship of those who control a carrier's operations, and who benefits by the adverse conditions.

Sea-Land also cites the House Report language cited above, for the proposition that ownership and control are the determining factors. However, Sea-Land also argues that the Commission should not impose sanctions on a "foreign-flag vessel owned, controlled, or chartered by * * * a U.S. citizen carrier just because the vessel's flag of registry happens to be that of an offending foreign government." Sea-Land concludes that "there does not appear to be an urgent need" to amend the regulations to address this matter.

APL too suggests the Commission emphasize the control and ownership aspects of common carrier companies, rather than the flags of the vessels they own or charter. APL concludes that no additional standards or criteria for invoking sanctions against foreign carriers are necessary. The only clarification APL would find acceptable, though not necessary, is one stating that foreign-flag carriers chartering U.S.-flag vessels are liable to sanctions just as are foreign-flag carriers with foreign-flag vessels.

Discussion

Rather than clarifying the definitions in issue, the comments received demonstrate the variety of possible interpretations—some more supportable than others—of the ambiguous terms used in the statute and marked for comment in this proceeding.

For example, many of the arguments that the definitions of U.S. and foreign carrier are clear enough, are themselves tautological in the sense that the arguments start out with or utilize undefined terms like "long-standing U.S.-flag carrier" (USA), "U.S. liner operator" (Sea-Land, APL), "U.S. citizen carrier" (Sea-Land), "U.S. carrier interests" (APL), and "foreign carrier" (all three commenters). The commenters also advocate possible interpretations (not to be codified, but simply to be adopted in practice) as that vessels who *benefit* from adverse foreign conditions should be subject to sanctions, or that a foreign government could be marked for sanctions according to where the vessel owner *resides*. (USA Comment, at 2). In short, the commenters urge the narrowest possible definition of "U.S. carrier" and the broadest possible definition of "foreign carrier".

The Commission's interest and purpose in initiating this proceeding was not to alter the objectives of Congress in enacting this legislation, but rather to streamline investigations conducted under the 1988 Act in which definitional issues arise, and to avoid a piecemeal resolution of these issues. Thus, the Commission sought suggestions clarifying the definitions or prescribing criteria. The commenters, however, claim that no clarifications are needed and urge instead that any disputes be resolved on a case-by-case basis using a spectrum of considerations.

While the Commission maintains that more precise definitions or criteria would aid in the effective administration of the statute, it has determined, in light of the comments received, not to propose amendments to its rules at this time. The Commission will, instead, and as recommended by the commenters, attempt to make case-by-case determinations as to which carriers are subject to protections and sanctions in the course of proceedings conducted under the 1988 Act. The actual administration of the 1988 Act may demonstrate, as the commenters contend, that no amendments are necessary. Or, it may illustrate more clearly than is presently apparent where clarifications are necessary and how they might be effected. Should it occur that the administration of the 1988 Act is hampered by the absence of clearer definitions or criteria in the Commission's implementing rules, the parties affected by such procedural

difficulties in the 1988 Act—including, perhaps, the commenters in this Inquiry—may request the Commission to propose appropriate amendments to the rules at that time, or the Commission may do so on its own initiative. Inasmuch as no further proceeding will be instituted or pursued for the time being, however, this Inquiry is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16944 Filed 7-19-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-15 Notice 1]

Federal Motor Vehicle Safety Standard 205 Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition for rulemaking; request for comments.

SUMMARY: This notice responds to an August 10, 1988 petition for rulemaking from Gila River Products Inc., Madico, Inc., Martin Processing, Inc. and 3M Energy Control Products. The petition seeks permission for applying tinting film with 35 percent light transmittance to *side and rear* windows of passenger cars. The agency has decided to grant the petition and to request comments to specific issues raised in the petition. The light transmissibility requirements for passenger car *windshields* are not at issue. States are particularly invited to comment whether there are any law enforcement concerns involving the operation by motorists of vehicles with darkly tinted window film and whether there is a need for Federal regulation of aftermarket films. The comments received in response to this notice will aid the agency in deciding whether to propose any changes to the current requirements.

DATES: Comments must be received on or before September 18, 1989.

ADDRESSES: Comments should refer to the Docket and notice numbers set forth above and be submitted (preferably in ten copies) to the docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m. Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Mr. Medlin's telephone number is: (202) 366-5276.

SUPPLEMENTARY INFORMATION: On August 10, 1988, a group of businesses, Gila River Products, Inc., Madico, Inc., Martin Processing, Inc., and 3M Energy Control Products, submitted a petition for rulemaking on the issue of the light transmissibility for motor vehicle glazing. Specifically, NHTSA was petitioned "to amend Federal Motor Vehicle Safety Standard 205 to permit 35 percent minimum luminous transmittance plastic film on glazing in the side and rear locations of passenger cars.' The petition was accompanied by a report, "Safety Benefits and Costs of Tinted Vehicle Glazing" by the Illinois Institute of Technology Research Institute (IITRI). The IITRI report summarized previous research conducted on the safety benefits and costs of tinted vehicle glazing. The report also discussed the methodology and results of an original study conducted by the IITRI to determine the effects on driver performance of reduced transmittance glazing in side and rear window locations.

In a letter dated January 11, 1989, NHTSA notified Robert P. Davis, then counsel to the petitioners, that it had granted the petition. The letter went on to state:

> Please note that the granting of this petition does not necessarily mean that the current requirements of Federal Motor Vehicle Safety Standard 205, Glazing Materials, will be revised as requested.
>
> Rather, the granting of this petition signifies that the agency believes that a review of the issues raised in the petition appears to have merit.

To aid in that review, the agency is issuing this request for comments.

Scope of Request for Comments

Since petitioners requested that Standard 205 be amended for "glazing in the side and rear locations of passenger cars," this request for comments will apply only to the issue of lowered transmissibility requirements for side and rear windows in passenger cars. Front windshields are not a subject of this request for comments. Petitioners have asked NHTSA to "permit 35 percent minimum luminous transmittance plastic film *on* glazing in the side and rear locations of passenger cars." All windows in passenger cars are currently required to have a transmissibility of at least 70 percent. The potential impact of this petition on light transmissibility of glazing may be seen from the following example. If film with 35 percent luminous transmittance is applied to side and rear windows with 70 percent transmissibility, those windows would have a transmissibility of 24.5 percent (.35×.70=.245). Petitioners are aware of this fact, noting with respect to the transmissibility levels discussed in the IITRI report, that:

> Since the film will reduce transmittance through the glass on which the film is installed, IITRI's findings presented in Exhibit #1 would regulate absolute transmittance levels, taking into account the installation of 35% minimum luminous transmittance film. (See P. I-5)

This request for comments has divided petitioners' conclusions and findings into four broad categories of issues. First is the potential effect which implementing the petitioners' request would have on visibility through motor vehicle glazing and, in turn, on safety. Second is the possibility that adding the petitioners' film to windows would reduce injuries due to laceration or ejection. Third is the potential change in driver comfort and health and vehicle design (including cost) that would result from adding the petitioners' film on vehicle windows. Forth is the effect that placing low transmittance film on vehicle windows would have on the ability of law enforcement officials to observe the actions of motor vehicle occupants, especially occupants in vehicles which have been stopped by those officials. In addition to responding to these four categories of issues, commenters are requested to address general questions raised by this petition.

For easy reference, each of the issues or questions has been numbered. Commenters are requested to provide all supplementary data (especially quantitative data) necessary to fully explain their answers.

1. Effect of Window Transmittance Levels on Driver Visibility and Safety

1. A. Studies and References Cited in the Petition

The petitioners state that driver perception or driver performance is at least as good with tinted glazing as without. They cite numerous references and the original research conducted by the Illinois Institute of Technology Research Institute (IITRI) in support of this claim.

Several of the cited studies date back to the 1950's (Roper, 1953; Heath and Finch, 1953; Doane and Rassweiler,

1955). (Page 8–12 of the report.) In each of these reports, untinted glass with about 89 percent transmittance is compared to "heat absorbing" glass with about 70 percent transmittance. For example, the 1984 Roper and Engel study compared windshields with 88 and 79 percent trransmitance, respectively. Even so, each study indicates some degree of reduction in visibility distance with reduced transmittance. In general, window tinting reduces visibility distance or target visibility. Moreover, most of these studies did not examine transmittances as low as those requested in this petition. Further, this early research was conducted comparing tinted and nontinted windshields. Finally, it is unclear whether the referenced studies are sufficiently applicable to support the hypothesis stated above, since both the petition for rulemaking and this request for comments are limited to side and rear windows.

(01) The agency seeks comment on the applicability of the referenced studies to the safety of glazing with a low level of light transmittance on side and rear windows for passenger cars, and the appropriateness of the conclusions that the petitioners have drawn from this research. The agency solicits any original, newer research available that may demonstrate a correlation between light transmittance and object visibility. The agency is particularly interested in studies on effect of glazing with a low level of light transmittance on front side windows of passenger cars and on drivers' ability to pick up movement in the area of peripheral vision, an ability which is critical in avoiding collisions or near misses.

The petitioners cite studies (e.g., Rockwell, 1970, Burger, 1977, and Mortimer, 1971) which conclude that visibility through side and rear glazing affects a small percentage of crashes. These studies all were conducted during the 1970's, a time when passenger cars very rarely had tinting applied to side and rear windows.

(02) The agency seeks comments on these studies and whether they support view that darker tinting is consistent with the needs of motor vehicle safety. The agency solicits any original, newer research that supports or refutes the petitioners' hypothesis.

The petitioners cite references indicating that other factors such as headlamp photometrics, window distortion, haze, headlamp dirt, headlamp aim, road curvature, pedestrian location, pedestrian reflectance, and presence of a glare vehicle, affect visibility more than tinting would.

(03) The agency seeks comment on whether the fact that environmental factors can cause reduced visibility should lead the agency to permit darker film, which may further reduce visibility.

(04) Please comment on whether forward field of view targets are seen by the driver through the driver's side window and thus, this window has critical zones of vision as does the windshield. As previously stated, the petitioner did not petition to change light transmittance values for windshields. (Reference: January 1989 Japan Society of Automotive Engineers (JSAE) Vol. 10 No. 1 Paper by Naofumi Nagaike and Yukio Hoshino titled "A Study of Driver's Forward Fields of Direct View for Large Trucks.")

1. B. Glare Reduction

The petitioners cite many references showing that tinted windows reduce glare. They state that reduced glare will lead to better visibility and improve driver performance because of increased driver comfort. There is little doubt that window tinting reduces glare. The tinting reduces light transmittance which reduces the amount of glare light reaching a driver's eyes. However, this is mainly true for windshields, which were not at issue in the petition and are not at issue in this request for comments. The question is whether the reduction of glare as a result of tinting in or on side and rear windows improves driver performance and/or driver visibility.

One of the major references cited by the petitioners is a 1955 report by Doane and Rassweiler. The IITRI test report states that these researchers "demonstrated that reduced masking attributable to glare reduction by tinted glazing compensated entirely for the visual effect of reduced brightness." An examination of the paper shows that although this statement appears to be true for a few selected times and conditions in the Doane and Rassweiler tests, it is not generally true. Throughout most of the visibility/glare encounter situations, seeing distance is greater through clear windows. The best visibility for "heat-absorbing" windows occurs under the test (nighttime) conditions where both of the two vehicles approaching each other are equipped with new headlamps, all headlamps are properly aimed, and the target has the highest reflectance (7 percent as opposed to 3 percent). For almost a half a mile before the vehicles meet, seeing distance is about the same through both types of windshield. On the other hand, immediately after the vehicles have passed one another, visibility distance through clear windows is about 5 to 10 percent greater through the clear glass than through the tinted glass, indicating a slower dark adaptation for the driver of the vehicle with darker windshields. Thus, it appears that this study does not support the hypothesis stated above. In addition, this report does not address effects of glazing tinted to 35 percent transmittance or less.

(05) Comments are solicited on the above report and agency analysis.

The petitioners also indicated that reduced transmittance of rear windows will reduce "veiling" glare. Petitioners define this as:

> produced when light is uniformly scattered from a reflecting or transparent surface with scratches, dust, or surface irregularities that scatter light uniformly across the surface. This scattering reduces the contrast between target and background making the target difficult or impossible to detect.

An example of "veiling" glare is the glare from the reflection on the rearview mirror of the lights of a following vehicle. Miller *et al.* (1974), stated that reflection from a vehicle's windshield is only a significant problem "in the presence of condensed moisture on the windshield or with excessively dirty windshields." NHTSA notes that these two causes of windshield "veiling" glare can be eliminated if the windshield defogging system is used and if the inside of the windshield is kept clean.

Concerning glare reduction:

(06) Miller *et al.* (1974), the reference cited by the petitioner for glare, state that "veiling" glare is a significant problem only "in the presence of condensed moisture or excessively dirty windshields." Do any data exist to show veiling glare from a following vehicle is a problem when caused by reflection from other objects such as rearview mirrors?

(07) Would veiling glare from the sides and rear be a problem in a passenger car, with scratched or dirty 24.5 transmissibility glazing (35 percent film applied onto 70 percent glazing results in a transmissibility of 24.5 percent) on the side and rear windows, when approached from straight ahead or from behind by a vehicle with high beams or regular headlights on?

(08) Do rear mirrors with "night settings" or the electronic mirrors which automatically switch and are now available on some vehicles, effectively eliminate glare from lights to the rear of a vehicle?

(09) Do most real world instances of disabling glare involve direct viewing through windshields? If so, how would tinting side and rear windows contribute to reduction of disabling glare?

(10) What are the glare reduction advantages of tinted window film on side and rear windows as compared to those from a driver wearing sunglasses? Would the same effects and benefits be achieved? If not, why not?

(11) Petitioners assert that "Sunglasses produce problems due to distortion and other factors that can reduce driving safety." (p. 13 of IITRI Report) What are the "other factors" reducing driving safety that may be a concern with sunglasses but not window tinting?

1. C. Drivers Field of View and Side Collision Avoidance

The petitioners state that a 1970 paper by Lyman Forbes indicates that drivers "spend most of their time looking at a small area in the forward field of view." The petitioners also cited a paper by Rockwell (1972) that indicates that 95 percent of driver foveal (the fovea, a small region of the center of the retina, subtending about two degrees, is the site of most distinct vision) viewing is limited to a small area of the windshield. The same reference states that side collision avoidance uses a small area of the driver's side window and the passenger side windshield. A 1974 paper by Burger *et al.* demonstrates, however, that 5 to 20 percent of "rear information seeking glances" in their study were viewed directly rather than through a mirror.

(12) If the 5 to 20 percent of rear information seeking glances, as cited by the 1974 paper by Burger, are direct viewing; how is that consistent with the finding on side collision avoidance in the 1970 Forbes paper?

(13) Is urban driving around blind corners explored in the paper by Rockwell (1972), that indicated that 95 percent of driver forward viewing is limited to a small area of the windshield?

(14) Even if drivers spend most of their time looking through the windshield, is it appropriate to reduce the visibility through those fields of view that are used by the driver in side-collision or other collision avoidance situations?

1. D. Reaction Time

The petitioners rely heavily on an IITRI experiment that sought to "compare the effects of various levels of side and rear transmittance upon driver performance under a variety of roadway conditions." The experiment, which involved a laboratory simulation of roadway conditions, was apparently performed to show that tinted glazing causes no detriment to driver visibility. This experiment measured the reaction time required for a subject to locate targets. The targets, which were light sources, were viewed through glazing with a 91 percent transmittance for tests of direct visibility. For tests of indirect visibility, they were viewed, via a mirror with 94 percent reflectivity, through tinted films of various levels of transmissivity. The experimenters conclude that, "the safety impact of tinting, as measured by response time is not significant compared to other variables." The agency notes that the targets used in the experiment may be representative of high contrast objects such as the front view of another vehicle, but they are not representative of low contrast objects such as the low reflectance pedestrian targets used in Society of Automotive Engineers (SAE) lighting tests. Visibility of pedestrians and bicyclists is important under a variety of circumstances, including turning, backing up, and pulling out of a parking space. The targets are also unrepresentative of adjacent vehicles that are seen from the side or the rear.

Concerning IITRI's experiment:

(15) Does the use of high contrast lights provide a reliable way of evaluating the visibility of low reflectance targets such as pedestrians and bicyclists through front, side, and rear windows?

(16) Since the IITRI sutdy was done with subjects from 18 to 45 years of age, are the light requirements for older drivers not considered in this research?

(17) Since the IITRI study was conducted with subjects with "normal" visual acuity and that many states issue drivers' licenses to drivers with 20/40 vision, should more work be done to consider this type of driver's ability to detect and identify objects at low levels of light?

(18) Should the issue of the effect of tinted glazing in combination with dirty or scratched glazing be considered, since the IITRI report identified dirty and scratched glazing, but not combined effects, as significant impediments to driver visibility?

(19) Please comment on the fact that accepted models such as "Detect", the copyrighted Ford Motor Company computer visibility model, available under a licensing agreement from Ford, show that an approximate reduction in seeing distance of some 97 feet for 55 year old drivers would occur if windshield transmittance was lowered from 70 to 24.5 percent (70 percent (glazing) × 35 percent (tinting film)) when detecting low contrast targets such as pedestrians with 8–12 percent reflectance?

(20) Would a deeper tinted rear window in the car ahead of a driver reduce the driver's ability to look through the preceding car and see cars ahead of the preceding car? Would any reduction in transmissivity lead to an increase in the reaction time to actions by the car ahead of the preceding car? Besides these effects, what other consequences are there of reduced visibility in this situation?

(21) What reduction, if any, in the visibility or detection of high mounted stop lights (and other stop lamps) of cars ahead of the preceding car would result if cars had 24.5 percent rear window light transmittance?

1. E. Night Driving and Adaptation to Darkness

Petitioners cited a study (p. 13) (McFarland, *et al.*, (1960)) that concluded "both clear and tinted windshield glass are impediments to vision under low levels of illumination for persons ranging in age from 16 through 89 yr." Petitioners argue that drivers continue to drive at night and "there is not presently any evidence to indicate that the interaction of tinted glazing and dark adaptation has in any way decreased driver safety". This comment appear to have missed the essence of the McFarland study. That report noted on page 52 that:

> The evidence from this study and other research clearly indicates that filters of all types including sections of tinted windshields interfere with every major visual function. There is no evidence to support the assertion that tinted windshields aid vehicle drivers in any way.

A recent Society of Automotive Engineers (SAE) paper entitled "Visibility from Motor Vehicles" authored by Henderson, Smith, Burger, and Stein concludes that: "At night luminance levels, however, all relevant research has shown tinted windshields to degrade visual performance."

(22) Please provide any additional comments on the studies cited above and provide any other available data or studies.

(23) Is slower dark adaptation, particularly after two vehicles pass on a two lane road, an inescapable effect of tinted windows? Are any test data available for glazing as low as 24.5 percent transmittance (35 percent (tinting film) × 70 percent (glazing))?

(24) Are there any data to support the claim that side and rear windows with 24.5 percent light transmittance on passenger cars at night, gives equivalent or better performance than glazing with 70 percent light transmittance?

(25) Nearly all of the past studies conclude that there is some impairment of visibility distance and target

identification when light transmittance is reduced, particularly with respect to viewing low contrast targets at night. Are there any data supporting the view that there is equal or better performance under such conditions?

(26) Does darker tinting pose any specific problems for the growing population of elderly drivers, particularly at night?

(27) What data on night target detection and identification of low reflectance targets exists for 24 to 70 percent transmittance glazing? Please describe the data, and provide findings, if any.

(28) Are there any experiments regarding backing up at night with 24 to 70 percent transmittance rear and side windows and only an inside mirror and on driver's side passenger car mirror? Are the mirrors and/or backup lights helpful or should larger mirrors and/or brighter backup lights be required on such vehicles?

1. F. Window Transmittance and Mirror Reflectance

The petitioners argue that trade-offs should be allowed between mirror reflectance and window transmittance. They cite references that indicate that there is very little direct viewing through side and rear windows. This appears, however, to be contradicted by the 1974 paper by Burger, *et al.* The petitioners also state that the effects of mirror reflectance and window transmittance are "multiplicative and interchangeable". (p. 51)

(29) Please provide comments on whether the effects of mirror reflectance and window transmittance are in fact "multiplicative and interchangeable". Please provide any data available.

(30) Does the petitioner's claim that there is a multiplicative and interchangeable relationship between these factors apply to backing up situations in which direct viewing is necessary and critical?

The IITRI report calculates the total amount of light available to the driver for visibility, when looking at the rearview mirror, as a combination of mirror reflectance and glazing transmittance. They cite the overall amount of luminance at the driver's eyes as 21 percent. (70 percent glazing × 30 percent reflectivity=21 percent). The report asserts that 21 percent

has been shown to be acceptable for side and rear viewing under the most critical roadway ambient lights conditions (Olson et al., 1974; Mansour, 1971). It is likely that even lower levels of luminance are acceptable for most roadway conditions and that the glare reductions obtained would significantly improve overall highway visibility, as indicated by Olson and Sivak (1984).

No basis is provided for the latter assertion about lower levels of luminance and glare reduction.

The above calculation does not take into effect the reduced light transmittance through tinting. If tinting is taken into account at the lowest transmissibility level, the calculation would be: 35 percent tinting×70 percent glazing×30 percent mirror reflectivity=7.35 percent luminance at the driver's eyes.

(31) Please comment on the validity of the two calculations made above. Which would be a more realistic assessment, assuming the driver is looking at the rearview mirror in a passenger car with 35 percent tinted film applied to 70 percent glazing on the side and rear windows?

(32) If the latter assessment is valid, would 7.35 percent liminance at the driver's eyes be an acceptable level of liminance under real life driving situations?

(33) Why should higher reflectance mirrors be required in vehicles with window tinting in order to provide equivalent visibility? What is the advantage of higher mirror reflectance over higher light transmissibility through side and rear windows?

1. G. Consequences of Incorrect Film Applications on Glazing

(34) Are there problems of distorted wision from incorrectly installed window film on rear or side windows?

(35) Would improperly installed window film tend to allow moisture or condensation between the glazing and the film, thus impairing visibility?

(36) How common is the problem of bubbling between the glazing and the film or creases in the film, that may arise from improper installation?

(37) What other problems may arise from improper installation?

(38) What mistakes are possible in installing film?

(39) How may these mistakes be avoided or corrected?

(40) Are there any data that show whether there is a greater or lesser incidence of incorrect tinted film installation among for-profit installers versus installation by individual passenger car owners?

(41) How prevalent is the problem of abrasion of the applied film through normal use? Is the film vulnerable to abrasion from actions by pets, children, ordinary window washing, or other means?

(42) How easy is it to remove the film once it has been applied? Can the individual passenger car owner personally remove the film or would this be a task to be undertaken by professionals?

1. H. Light Trucks, Vans, and Multipurpose Vehicles

Concerning the issue of MPVs, vans and light trucks being permitted to have tinted rear side and rear windows below 70 percent transmittance:

(43) Should passenger vans have different visibility requirements than cargo vans and light trucks for rear and side windows?

(44) Are the mirror requirements for larger fields of view and for outside rear view mirrors on both sides of a vehicle a significant reason why these vehicles may not experience any great loss of visibility?

(45) Would mirror requirements have to be changed on vehicles with tinted front side windows to provide equivalent visibility to those vehicles with 70 percent transmittance front side windows?

(46) Since vans and similar vehicles often do not have rear side windows, or even rear windows, do these vehicles belong in a separate category from passenger cars for visibility requirements?

1. I. Miscellaneous Visibility Issues

(47) Is there a need for NHTSA to conduct an extensive research program to investigate what minimum visibility should be allowed through each vehicle window?

(48) Should the visibility needs for each window be determined separately by careful scientific experiments using low contrast targets?

(49) Are front side window and rear side window minimum visibility needs similar? Is front side window visibility more critical than rear side window visibility? Please provide any available data on this issue.

(50) Are portions of front side windows as critical to visibility as the windshield? Why should they be different?

(51) Is the rear window more critical to visibility than the rear side windows?

(52) Petitioners claim that the 70 percent transmittance requirement is design based and not safety based. What is the transmittance through 70 percent transmittance production glazing when mounted at the largest installation angles measured as the driver looks through the window (not perpendicular to the glass)? Please provide curves of transmittance versus installation angle.

(53) Do states that allow tinted window film have any safety data to

support allowing less transmittance than the 70 percent required in FMVSS No. 205? Are test data available to demonstrate this?

(54) Is glazing that reverts to clear when not exposed to light available to address glare?

Petitioners stated that haze is a serious problem, and is not to be confused with reduced transmittance. (p. III–9) They define "haze" as a "general term used to describe light scattering by particles suspended in an otherwise nonscattering or transparent medium (Wiedner and Hsai, 1979)." (p. 38) Research by Rompe and Engel, and subsequently by Weight, was referred to. Petitioners cited the research as showing transmittance levels as low as forty percent on side and rear glazing do not detract from driver performance, and that tinted glazing can substantially reduce the effects of haze.

(55) The agency seeks comments on the relevance of these studies to this petition.

(56) Are there data that confirm tinted glazing can reduce the effects of haze?

(57) Are data on acceptable haze levels (allowed by ANS Z2.1) available to show that lower window transmittance reduces the effect of haze?

Petitioners stated that the growing use of larger and more curved glazing surfaces in vehicles has resulted in problems "with double images, distortion, astigmatism and differential deviation." (p. III–9) Petitioners assert that at least in the case of double images, tinted glazing can be a substantial remedy.

(58) Are there any data that support this assertion?

2. Amelioration of Injuries From Laceration and/or Ejection

The petitioners argue that tinted film applied to the interior of vehicle windows makes the glazing perform as (Item 14) glass/plastic glazing which has been shown to be highly effective in preventing laceration injuries and reducing ejections in automobile crashes. Petitioners cite research by Clark and Sursi (1984) (p. III–12) indicating that an inner plastic layer in glass-plastic glazing may be strong enough to hold broken glazing together to reduce partial ejection of occupants in side impacts. Petitioners state that the IITRI believes applying tinting film on the side windows of vehicles may reduce the number of occupant ejections, even without extending the film beyond the visible edge of the window.

There is little dispute that glass/plastic glazing prevents laceration and could reduce ejections. However, the agency is unaware of any data which show that application of tinted film to glazing will cause that glazing to perform the same as glass/plastic glazing.

(59) Are there data on aftermarket-installed film to support petitioners' assertions?

(60) How will the installer attach the plastic film to the existing glazing in a passenger car so that it will act as Item 14 glass-plastic glazing?

(61) In the case of a new vehicle, if the film and the glazing is to be considered as glass/plastic glazing, what difficulties would there be in the film installer's certifying it as such?

(62) Besides lower costs, are there benefits to *not* requiring glazing to be attached so that it acts as glass-plastic glazing?

(63) Can there be effective ejection protection if the tinted plastic film is not attached to the window frame and if application is not certified as being done correctly?

(64) Are data available to substantiate claims of ejection and laceration prevention on consumer applied tinted window film?

(65) Are there films available which can mitigate ultraviolet radiation, heat, glare, etc., have high transmissibility, and also help mitigate lacerations and/or ejections?

3. Health Effects, Protection of Interior Parts, and Driver Comfort

The petitioners also raise several considerations that involve the general health of motor vehicle occupants and light and heat damage to vehicle components. The petitioners argue that tinted film will protect vehicle interiors and occupants from the effects of ultraviolet (UV) light from the sun. They cite damage to upholstery fabrics and injury to occupant skin and eyes as reasons to permit lowered light transmittance on side and rear windows. Damage to upholstery fabric due to UV light is not a safety issue, and therefore cannot be considered a valid reason to propose amending FMVSS 205. Injury to the skin and eyes of vehicle occupants due to UV light may be considered a health issue, but not a motor vehicle safety issue.

The references cited by petitioners indicate that excessive exposure to UV radiation may cause skin and eye damage. However, there is no indication in these references that current ultraviolet exposure in automobiles exceeds critical levels. The petitioners argue that tinted films will protect vehicle occupants from eye damage due to infrared (IR) radiation. They also combine the discussion of the infrared radiation with heat loads and driver comfort. These last two issues are discussed elsewhere, so only the eye damage issue is addressed here.

3. A. Eye Damage From Exposure to Infrared Radiation

The petitioners argue that tinted films will protect vehicle drivers from glare and permanent eye damage due to radiation in the visible spectrum. Petitioners cited only one reference that discussed the possibility of eye damage due to exposure to infrared radiation. No indication was given that infrared radiation within an automobile reaches damaging levels.

(66) What data are there to demonstrate that the exposure of automobile drivers to infrared and ultraviolet radiation is sufficient to cause permanent eye damage?

(67) Are there clear films or high transmittance films which have the capability to block infrared and ultraviolet radiation?

3. B. Adverse Effects on Driver Performance From Excessive Heat and Glare

The petitioners argue that reduced glare and reduced passenger compartment heat will improve driver comfort and therefore, driver performance. Among the studies cited by petitioners, a 1980 study by Beshir and Romsey investigated the performance of "four perceptual motor-tasks (reaction time, pursuit tracking, eye hand coordination and mental multiplication) under four different levels of temperature: 74 degrees, 90 degrees, 100 degrees and 110 degrees Farenheit Wet Bulb Globe Temperature (WBGT)." It was found that both heart rate and body temperature increased with ambient temperature. Subjects also indicated that they thought their performance decreased with increasing temperature. Test scores, however, "indicated that increasing the temperature to 100 degrees and 110 degrees Farenheit . . . WBGT actually enhanced performance during the brief thermal exposure of this study."

Hockey (1986) studied effects of temperature on task performance with respect to time. He concludes: "For cognitive/reaction time tasks there is a clear trade-off of time and temperature, though marked impairments . . . are rare below about 35 degrees C (95 degrees F), unless exposure time is greater than about 2.5 hr. For the continuous performance tasks (tracking, vigilance, and dual tasks), however, the most striking feature is that decrement

is almost independent of exposure time, though very sensitive to temperature increases above about 30 degrees C." Though these studies may relate driver comfort and performance, it is difficult to tell bacause the test tasks are not decribed in the reports. The studies appear to indicate that driver performance is maintained at a higher temperature than is driver comfort.

(68) The agency seeks comments on (a) the relationship of these studies to safe driving, (b) the interior temperatures at which the driving task becomes difficult, and (c) the effects of tinted and clear films on reducing interior temperatures. Quantitative responses would be most helpful.

3.C. Effect of Heat on Internal Vehicle Components

The petitioners argue that tinted films will reduce heat and thereby reduce damage to internal vehicle components, specifically sensitive electronic components.

(69) The agency requests comments on the validity of petitioners' arguments on this issue.

The petitioners claim that tinted window films will reduce vehicle heat loads. This, they argue, will reduce air conditioner size and use, and thus, cholorofluorocarbon (CFC) emissions will be reduced. This is not a safety issue. However, the agency is interested not only in the safety effects, but also the environmental effects of its standards.

(70) What is the relationship, if any, of tinting to CFC emissions?

(71) What is the relevance of this point in the future when use of CFCs may be prohibited (as in Sweden) or it may be mandatory to capture and reprocess any emissions?

(72) Are there clear or high transmittance films that will also block heat?

4. Law Enforcement Issues

The petition acknowledged that various state and local law enforcement officials have raised concerns about the use of tinted films on motor vehicle windows. Petitions asserted that they have thoroughly investigated these issues. Petitioners stated that they "believe that the concerns of law enforcement authorities arise from misperceptions and from reactions to very deeply tinted films for which this Petition does *not* seek approval." In petitioners' experience, law enforcement officials' concerns have been alleviated once they "become more knowledgeable about tinted film and certain misperceptions have been corrected."

Petitioners asserted that once the law enforcement officials operate motor vehicles with 35 percent luminous transmittance film, "their objections typically disappear", and they realize that their ability to look safely into vehicle interiors is not impaired. Petitioners also asserted the following:

> Petitoners fully recognize the need to protect the safety of law enforcement officers. Petitioners are not aware, however, of *any* instances in which law enforcement officers have been assaulted from behind the cover of tinted side or rear windows, much less from windows tinted with 35 percent luminous transmittance film.

Petitioners cited film cards that display various levels of luminous transmittance, and lightweight portable photometric sensing devices as aids for law enforcement officials to monitor compliance with luminous transmittance requirements.

(73) What is the minimum transmittance for a vehicle's windows necessary to enable a person to look through those windows and see objects, persons, and activities within the vehicle in bright sunlight? At night?

(74) Have law enforcement officers encountered difficulties when trying to identify occupants of vehicles or observe activities within vehicles using low percent transmittance film? How common an occurrence is this?

(75) Are there documented instances in which law enforcemnet officers or other individuals have been unexpectedly assaulted by vehicle occupants whose actions were obscured by tinting on the glazing? Is there any information about the light transmittance of the film plus glazing in these instances?

(76) Please comment on the efficacy of film cards and photometric sensing devices in monitoring compliance with motor vehicle luminous transmittance requirements.

5. Other General Questions Associated With This Petition

Answers to the following questions will further help the agency in determining whether a rulemaking action on Standard 205 is necessary.

(77) What should the light transmissibility standard be? Should the existing 70 percent light transmissibility standard be raised, or lowered? Please provide a rationale and background materials and other information for your recommendation.

(78) How should light transmissibility be measured? Should the agency continue to measure it at a 90 degree angle to the glazing? Should the agency instead measure light transmissibility according to the angle of installation of the glazing on the motor vehicle, and how the driver sees through the glazing?

(79) Should the agency regulate directly the performance characteristics of aftermarket window tinting film? If so, how and to what extent? Since tinted film may be used not just on motor vehicle glazing but on boats or buildings, how could NHTSA distinguish between film intended for motor vehicle applications and film intended for other uses?

(80) The agency requests that domestic and foreign manufacturers supply data as to what percentage of their passenger car fleet is sold with tinted glazing and what the tint (percent transmittance) is on these various vehicles according to glazing type (both measured perpendicular to the glass and measured at the angle at which the driver sees through the glass as installed in his or her vehicle).

(81) The agency addresses this question to domestic and foreign manufacturers. If the light transmissibility standard for passenger cars should be lowered to some point below 70 percent, will manufacturers offer, as standard or optional equipment on new cars, tinted windows that conform to the lower standard? If so, will the tinting be in glazing itself, or will it be in film applied onto the glazing?

(82) Are there data at the state level that show the effects of aftermarket window tinting on visibility, increase in accidents or near misses, law enforcement or other issues that are relevant to this request for comment? If so, please cite references, or provide the data.

(83) Why should windows remain tinted at night when technology now exists to change the transmission of glazing to avoid night visibility problems?

(84) Is it important for a driver to establish eye contact with another driver for detecting hand signals or intent in various traffic scenarios, which 35 percent light transmissibility film over 70 percent light transmissibility glazing might make impossible?

(85) How should questions of international harmonization on this subject be treated? The Japanese Ministry of Transport (MOT) plans to revise their Safety Regulations for Road Vehicles by introducing new regulations on motor vehicle windows to which tinted films have been applied. The MOT notified member nations of the General Agreement on Tariffs and Trade (GATT) of the planned revisions through the GATT Secretariat in December 1988. In summary, the new

regulations prescribe that the use of tinted films will be restricted to those which allow a light transmission of 70 percent or more after application. Side windows to the immediate left and right of the driver are regulated. The revisions were scheduled to be implemented in March 1989.

Interested persons are invited to submit comments on the request for comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: July 17, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-17060 Filed 7-17-89; 2:06 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

AGENCY: ACTION.

ACTION: SSI adjusted income eligibility levels for the Foster Grandparent and Senior Companion Programs.

SUMMARY: This Notice adjusts the 1989 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in the **Federal Register**, April 19, 1989 (54 Fed. Reg. 74).

This adjustment is based on the 1989 Supplemental Security Income (SSI) guidelines disseminated by the Social Security Administration in May 1989. Revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Poverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplemented federal SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose incomes met the eligibility levels published in April 19, 1989, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this Notice shall apply to persons enrolling in the Programs on or after its effective date.

Schedules of Income Eligibility Level: Foster Grandparent Program and Senior Companion Program

[For the following States]

State	One	Two	Three	Four	Five	Six	Seven	Eight
AK	$11,285	$15,575	$18,125	$20,675	$23,225	$25,775	$28,325	$30,875
CA	9,570	16,340	18,380	20,420	22,460	24,500	26,540	28,580
CO	7,475	11,610	13,650	15,690	17,730	20,225	22,775	25,325
CT	10,590	14,635	16,675	18,715	20,755	22,795	24,835	26,875
MA	7,530	10,445	12,575	15,125	17,675	20,225	22,775	25,325

(For household units with more than eight members, add $2,550 in Alaska, Massachusetts and $2,040 for California, Colorado, and Connecticut for each additional member)

The following income eligibility levels reflecting 125% of the DHHS Poverty Income Guidelines were published in the April 19, 1989 **Federal Register** and remain in effect. The levels apply to all states, the District of Columbia, Puerto Rico, and the Virgin Islands (except Alaska, California, Colorado, Connecticut, and Massachusetts).

Household Units of

States	One	Two	Three
All	$7,475	$10,025	$12,575
Hawaii	8,590	11,525	14,485

(For household units with more than three members, add $2,550 in "All" States and $2,940 in Hawaii for each additional member)

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program/Senior Companion Program, 1100 Vermont Avenue, NW., Suite 6100, Washington, DC 20525 or telephone (202) 634–9349.

SUPPLEMENTARY INFORMATION: ACTION programs are authorized pursuant to section 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended Pub. L 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guideline published by DHHS pursuant to sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

Signed in Washington, DC on July 13, 1989.

Donna M. Alvarado,

Director of ACTION.

[FR Doc. 89–17018 Filed 7–19–89; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89–115]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow the field testing in the State of Mississippi of cotton plants genetically engineered for tolerance to the herbicide Bromoxynil and to initiate crosses between genetically engineered plants and nontransformed cotton varieties and lines. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public

inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89–047–07.

SUPPLEMENTAL INFORMATION:

The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 53 FR 22906).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test cotton plants genetically engineered for tolerance to the herbicide Bromoxynil and to initiate crosses between genetically engineered plants and nontransformed cotton varieties and lines.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provided the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance has been inserted into the cotton genome. In nature, genetic material contained in chromosome can only be transferred to other sexually compatible flowering plants by cross-pollination. In this field test, the introduced gene cannot spread to other plants by cross-pollination because the field test is at a sufficient distance away from any compatible plants with which cotton plants may cross-pollinate.

2. Neither the herbicide tolerance gene by itself, nor its gene product, confer on cotton plants any plant pest characteristic. Traits that lead to weediness in plants are polygenic and cannot be conferred by adding a single herbicide tolerance gene.

3. The micro-organism *Klebstilla pneumoniae* subsp. *ozoanae* from which the herbicide tolerance gene was isolated is not a plant pest and is widely distributed in the environment as a common soil inhabitant.

4. The herbicide tolerance gene does not provide the transformed cotton plants with any measurable selective advantage over nontransformed cotton plants in their ability to disseminate or to become established in the environment.

5. The vector (tumor inducing Ti-plasmid) used to transfer the herbicide tolerance gene to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence of a known plant pest, has been effectively disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, *Agrobacterium tumefaciens*, the bacterium that was used to deliver the vector DNA containing the herbicide tolerance gene into the plant cell is a well known plant pest, and has been effectively eliminated with an appropriate antibiotic and no longer associated with the transformed cotton plants.

7. Generally, the horizontal movement of the introduced gene(s) is not possible except by pollination of compatible flowering plants. In this case, the cotton plants are generally self-pollinators and therefore, do not cross-pollinate other cotton varieties or other plants. The vector acts by delivering the gene to the plant genome where it is inserted stably into the plant chromosomal DNA. The vector moiety does not survive in the plants as it cannot replicate in plant cellular background.

8. Bromoxynil is a herbicide that rapidly degrades in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The size of the field test is very small (238 feet and 4 inches wide by 378 feet long) and is biologically isolated from many species of wild plants and animals by a surrounding area of cultivated land.

10. Being located on a private farm, the experimental plot has good physical security.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions on NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 14th day of July 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–16976 Filed 7–19–89; 8:45 am]

BILLING CODE 3410–34–M

Soil Conservation Service

Santa Teresa Critical Area Treatment Measure, New Mexico

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40

CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Santa Teresa Critical Area Treatment Measure, Dona Ana County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ray T. Margo, Jr., State Conservationist, Soil Conservation Service, 517 Gold Ave., SW., Rm. 3301, Albuquerque, NM 87102–3157, telephone 505–766–3277.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ray T. Margo, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns critical area treatment. The planned works of improvements will control wind and water erosion. Conservation practices to be installed include an earthen diversion (800 linear feet), an underground outlet (450 linear feet), grade stabilization structures (2 structures), and a two row field windbreak (2,740 linear feet).

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Ray T. Margo, Jr.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Ronald L. Lauster,

Acting State Conservationist

July 13, 1989.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 89–16992 Filed 7–19–89; 8:45 am]

BILLING CODE 3420–16–M

DEPARTMENT OF COMMERCE

Export Administration

[Docket Nos. 9102–01, 9102–02]

Action Affecting Export Privileges; Marek Cieslak

Summary

Pursuant to the June 16, 1989, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Marek Cieslak, individually and doing business as M.C. Electronics, Orabantvagen 21, S–17530 Jarfalla, Sweden (hereinafter Respondents), and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of twenty years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR Parts 768–799).

Order

On June 16, 1989, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Date: July 14, 1989.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Decision and Order

Appearance for Respondents: Rodney A. Klein, Esq., 2300 Bell Executive Lane, Sacramento, CA 95825

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration U.S. Department of Commerce Room H–3329 14th Constitution Ave. NW., Washington, DC 20230

Preliminary Statement

The Office of Export Enforcement (the "Agency"), Bureau of Export Administration, U.S. Department of Commerce issued a January 13, 1989 charging letter against Respondent Marek Cieslak, individually and doing business as Respondent M.C. Electronics. The letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended (the "Act"), and under the authority of the Export Administration Regulations (the "Regulations"), promulgated pursuant to the Act.[1] The letter charged that, on four occasions from December 1986 through May 1987, Respondents exported, caused to be exported, or attempted to export microprocessors from the United States to Sweden without the required U.S. export license, in violation of §§ 787.3(a) and 787.6 of the Regulations.

Respondents filed an answer denying the charges. Neither party requested a hearing, and accordingly this case is decided on the record without a hearing. The record for decision June 7, 1989.

Discussion

The Agency's essential argument was that Respondent Cieslak has previously been found guilty in a criminal proceeding of the unlawful export activity alleged in the charging letter, and hence in this administrative proceeding is now collaterally estopped from denying that he engaged in such activity. Thus the Agency showed that Respondent Cieslak, in October 1987 in a federal district court in California, pleaded guilty to four counts of a criminal indictment that were essentially the same as the four instances of unalwful export activity alleged in the charging letter.

What happened in these four instances emerges generally from the submissions by both the Agency and Respondents. Apparently on or about each of the first three dates cited in the indictment and in the charging letter—December 15, 1986, January 26, 1987, and February 2, 1987—Respondents ordered microprocessors were shipped from the United States to Respondents in Sweden. These shipments were made without the U.S. licenses that were required for national security reasons for the exports, and the charge for each shipment was making an unlawful export. According to the Agency's submissions, Respondents for several years made lawful exports of this type both by understating the value of the shipment in the invoices so as to avoid arousing suspicion and also by

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751 September 28, 1988).

smuggling the goods out of the United States by hand.

As to the fourth date cited in the indictment and in the charging letter, evidently on or about February 2, 1987 Respondent Cieslak was in the United States with microprocessors purchased from this same distributor, and he was arrested while still in the country. Again the U.S. license required for national security reasons for an export had not been obtained, and the charge was attempting an unlawful export.

For each of three counts in the criminal indictment based on the first three instances described above, Respondent Cieslak was sentenced to an imprisonment of two years and three months, such terms to run concurrently; and on the fourth count he was given a five-year suspended sentence, and five years' probation commencing upon his release from prison, on condition that he not reenter the United States without the written permission of the Probation Officer. For a sanction in this administrative proceeding, the Agency proposed a twenty-year denial of U.S. export privileges.

Respondents argued that the criminal conviction should not be controlling in this administrative proceeding because Respondent Cieslak's guilty plea had been based on the mistaken belief that he would be sentenced only to time served. Respondents also challenged the Agency's assertion that these microcomputers are controlled for national security reasons, noting that the destination of the shipments was Sweden, a friendly country.

Respondents further claimed that the Agency's case is defective for failure to identify the actual exporter of the microprocessors in the three instances of an export, and for failure to make that exporter a party to this proceeding. Respondents argued additionally that imposition of any sanction in this administrative proceeding would be unconstitutional double jeopardy.

Respondents contended also that the Agency should be barred from bringing this administrative action because it knew of this possible action for over two years, but waited to serve Respondents until the day before Respondent Cieslak's deportation from the United States. That situation, claimed Respondents, left Respondent Cieslak unable to defend himself, since he cannot automatically reenter this country for five years. Respondents claimed both laches and the statute of limitations.

Finally, Respondents asserted that a denial of U.S. export privileges would be an undeservedly severe sanction because the criminal conviction was not for a willful violation, because Respondent Cieslak has been a reputable businessman in Sweden, and because he voluntarily opened his books to the U.S. Embassy there. Further on the magnitude of the sanction, Respondents asserted that they had made some attempts to obtain U.S. export licenses, and that the U.S. supplier from whom they purchased the microcomputers really should be the one held responsible for obtaining the licenses. Respondents also introduced evidence suggesting that microprocessors of this type are sold to Poland by a large American company and that they are sold on the open market in Poland.

Conclusion

As contended by the Agency, Respondents are collaterally estopped in this proceeding from contesting their violations of the Act and Regulations as established by the criminal conviction. This application of collateral estoppel is not avoided by Respondents' claim that the guilty plea in that criminal case was based on a mistken belief. If Respondents should succeed in obtaining a reversal of the criminal conviction, that reversal would justify a reconsideration of this application of collateral estoppel; but, in the present state of the record of this proceeding, that conviction establishes Respondents' commission of the alleged violations. See, e.g., *Spawr Optical Research, Inc.* v. *Baldrige*, 649 F. Supp. 1366, 1369 (D.D.C. 1986).

As to Respondents' challenge to the national security basis for controlling the export of the microcomputers at issue here, Respondents have supplied no evidence to support their challenge (see generally Section 770.1(b) of the Regulations). As for the absence from this case of the exporter or any identification of it, Respondents have not shown any attempt to obtain the identification through discovery or any convincing reason why their appearing alone in the case leaves them unable fairly to defend themselves. Respondents also argued double jeopardy, but supplied no reason why it should apply to an administrative proceeding like this one.

Respondents' argument based on the statute of limitations also fails. The applicable statute is five years (28 U.S.C. 2462), and the oldest violation charged here is dated December 15, 1986. The Agency commenced this proceeding in January 1989, well within the five-year period, and the Agency's position is that this commencement tolls the statute. Past rulings of this Department have held that cases such as this one lack grounds for dismissal in this Tribunal based on the statute of limitations. See, e.g., *In the Matter of Linotype Company, a Subsidiary of Allied Corporation and a Successor-in-Interest of Bunker Ramo-Eltra*, ITA–AB–6–84, April 10, 1987 Decision and Order 20.

As for Respondents' argument of laches, they have failed to support it with any showing of how the passage of time has disadvantaged them, other than a reference to Respondent Cieslak's needing permission to reenter this country. But they have shown neither any effort to obtain that permission, nor how their defense has suffered from his remaining abroad.

As to an approprite sanction, the twenty-year denial of U.S. export privileges proposed by the Agency is severe. But Respondents' actions, which resulted in a multiple count criminal conviction, constituted a serious transgression. Respondents' arguments aimed at lessening the severity of any sanction carry only modest weight. That they expended some efforts to obtain U.S. export licenses is commendable, but still substantially short of the actual obtaining of the licenses that they law required. Their efforts indicate also their awareness of the licensing requirements.

Respondents' argument that their U.S. supplier should be held to some responsibility for obtaining the export licenses fails to undo the point that their criminal conviction establishes their having violated the Act and the Regulations. It is their violations thereby established—including the fact that their transgressions were serious enough to support a criminal conviction—that supplies the basis, in this administrative proceeding, for finding that they committed the charged violations and for determining the appropriate sanction.

Respondents argued additionally, citing evidence they introduced, that microprocessors of the type with which they were involved are being sold to Poland and on the open market in Poland. Even if Respondents' evidence were accepted as establishing the sales postulated by Respondents—an issue that is inconclusive in the record—it leaves unaddressed the basic point that such sales to Poland could lawfully be made only pursuant to U.S. validated licenses. It leaves unaddressed also such questions as whether such licenses would actually be issued and, if so, to what sort of end users and for what sort of end uses, and subject to what conditions. The whole effectiveness of this export control is obviously undercut

by efforts such as Respondents to export without the required licenses.

In sum as to the sanction, Respondents' violations were significant, and as such merit the significant twenty-year denial period proposed by the Agency. Accordingly, it shall be so ordered.

Order

I. For a period of twenty years from the date of the final Agency action, Respondents: Marek Cieslak, individually and doing business as M.C. Electronics, Drabantvagen 21, S–17530 Jarfalla, Sweden, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Date: June 16, 1989.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 89–16961 Filed 7–19–89; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications; Harlem (Manhattan), NY (Service Area)

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at *$165,000* in Federal funds and a minimum of *$29,118* in non-Federal contributions for the budget period *January 1, 1990* to *December 31, 1990.* Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the *Harlem (Manhattan), New York SMSA* geographic service area bounded on the South by 110th Street; on the East by the East River; on the West by the Harlem River; and on the North by 155th Street.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: *Closing Date:* The closing date for applications is *September 29, 1989.* Applications must be postmarked on or before *September 29, 1989.*

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278. Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office, (212) 264–3262.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A Pre-application Conference to assist all interested applicants will be held on August 22, 1989 from 10:00 a.m. to 3:00 p.m. in New York, New York at the Adam Clayton Powell State Office Building, 163 West 125th Street, 12th Floor. For information, please contact the MBDA New York Regional Office at (212) 264–3262.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Gina A. Sanchez,

Regional Director, New York Regional Office.

Date: July 14, 1989.

[FR Doc. 89–16988 Filed 7–19–89; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; NMFS, Southwest Fisheries Center (P77 #35)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038.
2. *Type of Permit:* Scientific Research.
3. *Name and Number of Marine Mammals:* Up to 20,000 California sea lions (*Zalophus californianus*) will be harassed during annual pup counts. Of these, 15 will be radio or satellite tagged (juvenile or adults), 900 pups will be tagged or marked, and 900 pups will be hot branded. All age and sex classes may be disturbed during the censusing, food habit, and tagging operations.
4. *Location of Activity:* Southern California Bight.
5. *Period of Activity:* 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Date: July 14, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–16986 Filed 7–19–89; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent to Grant Exclusive Patent License; Upjohn Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Upjohn Company having a place of business in Kalamazoo, MI, an exclusive license in the United States and certain foreign countries to practice the invention entitled "Novel Inhibitor of HIV" U.S. Patent Application Serial Number 7–283,739. Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning (703) 487–4650 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquirites, comments, and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Stephen Gates,

Associate Director, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–16993 Filed 7–19–89; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Overshipment Charges for Certain Man-Made Fiber Tetile Products Produced or Manufactured in Pakistan

July 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting overshipment charges.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of the current limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In accordance with an exchange of letters dated January 6 and 28, 1988 between the Governments of the United States and Pakistan, 3,798,530 square meters shall be charged to the 1989 limit for Category 615.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51, published on January 4, 1988; and 53 FR 50438, published on December 15, 1988.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 17, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Government of the United States and Pakistan, I request that, effective on July 24, 1989, you charge 3,798,530 square meters to the current limit established for Category 615 in the directive of December 12, 1988.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–17030 Filed 7–19–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic; Correction

July 14, 1989.

On page 25490 in the table of the letter to the Commissioner of Customs published on June 15, 1989 (54 FR 25489), change "Group V" to "Group IV."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–17028 Filed 7–19–89; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

July 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Effective Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50440, published on December 15, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

July 14, 1988.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on December 12, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1989 and extends through December 31, 1989.

Effective on July 24, 1989 the directive of December 12, 1988 is being amended to increase the current limits for the following categories, as provided by the current agreement between the Governments of the United States and Singapore:

Category levels in group I	Amended twelve-month limit [1]
239	369,379 kilograms
331	374,579 dozen pairs
334	62,038 dozen
335	177,021 dozen
340	601,966 dozen
341	163,334 dozen
342	102,714 dozen
435	6,951 dozen
604	740,288 kilograms
631	385,490 dozen pairs
534	236,853 dozen
645/646	133,422 dozen
647	473,304 dozen
Group II	
200–229,237,300/301, 313–330, 332, 333/633, 336, 345, 349, 350, 351/651, 352/652, 353/354/653/654, 359–369, 400–434, 436, 438, 439, 440–444, 445/446, 447, 448, 459–469, 600–603, 606, 607, 611–630, 632, 636, 642–644, 649, 650, 659–S,[2] 659–V,[3] 659–O [4] and 665–670, as a group. Sublevels in group II	38,634,813 square meters equivalent
237	199,008 dozen
642	202,163 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1988.

[2] In Category 659–S, only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] In Category 659-V, only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0080.

[4] In Category 659-0, all HTS numbers except 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 in Category 659-S; and 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0080 in Category 659-V.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 89-17027 Filed 7-19-89; 8:45 am]

BILLING CODE 3510-DR-M

Facsimile of the New Export Visa Stamp for Textiles and Textile Products Exported From India

July 17, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

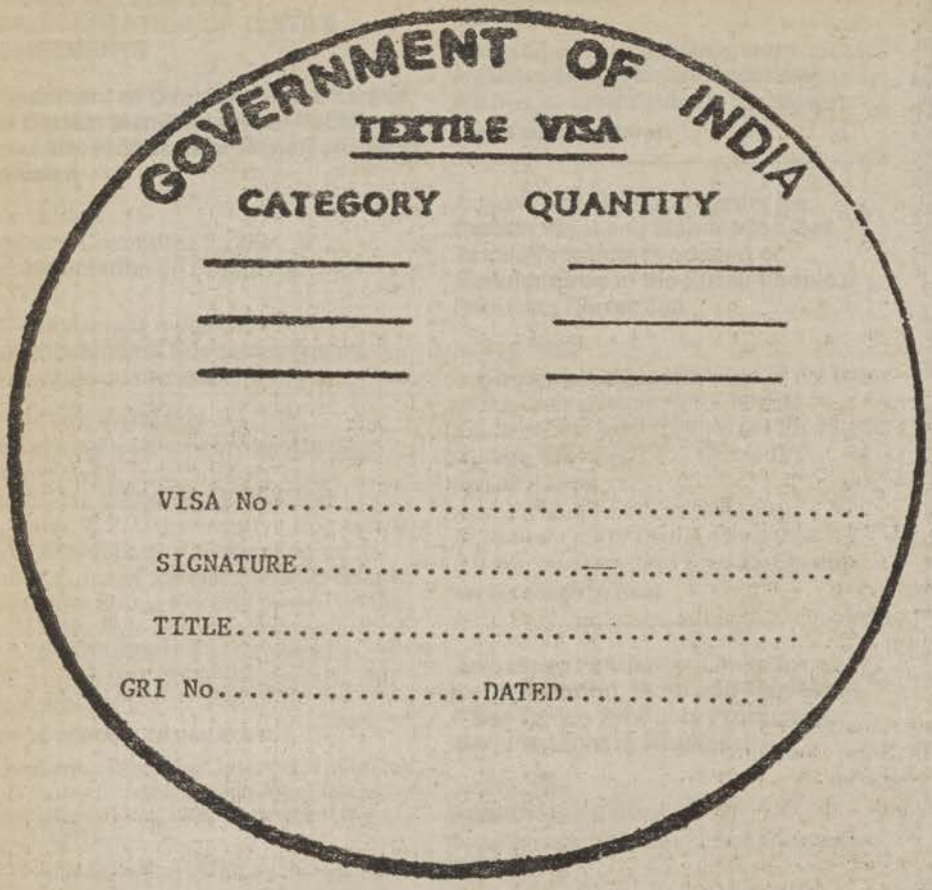
FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: On May 26, 1989 a notice was published in the **Federal Register** (54 FR 22795) announcing the use of a new export visa stamp for goods which are produced or manufactured in India and exported from India on and after June 1, 1989. A facsimile of the new stamp is published below.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M



[FR Doc. 89-17029 Filed 7-19-89; 8:45 am]
BILLING CODE 3510-DR-C

Announcement of Request for Bilateral Textile Consultations with the Government of Argentina

July 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 30, 1989, the Government of the United States requested consultations with the Government of Argentina regarding imports of wool trousers, slacks and shorts in Category 448, produced or manufactured in Argentina.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with Argentina, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Argentina and exported during the twelve-month period which began on June 30, 1989 and extends through June 29, 1990, at a level of 51,108 dozen.

A summary market statement concerning Category 448 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448, or to comment on domestic production or availability of products included in Category 448, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Category 448. Should such a solution be reached in consultations with the Government of Argentina, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Ronad I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Argentina

Category 448—Women's and Girls' Wool Trousers, Slacks and Shorts

June 1989

Summary and Conclusions

U.S. imports of women's and girls' wool trousers, slacks, and shorts (Category 448) from Argentina reached 54,870 dozen during the year ending April 1989, nearly 5 times the 11,474 dozen imported a year earlier. During the first four months of 1989 imports of women's and girls' wool trousers, slacks, and shorts (Category 448) from Argentina reached 17,226, 52 percent above the amount imported in the first four months of 1988. Argentina is the largest supplier of women's and girls' wool trousers, slacks, and shorts to the U.S., accounting for 16 percent of total year ending April 1989 imports, and 49 percent of total Category 448 imports during the first four months of 1989.

The U.S. market of women's and girls' wool trousers, slacks, and shorts (Category 448) is being disrupted by the sharp and substantial increase in Category 448 imports from Argentina.

U.S. Production and Market Share

U.S. production of women's and girls' wool trousers, slacks, and shorts (Category 448) has been on the decline since 1982, falling from 885,000 dozen in 1982 to 541,000 dozen in 1988, a decline of 39 percent.

The domestic manufacturers' share of the women's and girls' wool trousers, slacks, and shorts market declined 25 percentage points in just six years, falling from 87 percent in 1982 to 62 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of women's and girls' wool trousers, slacks, and shorts (Category 448) almost tripled, increasing from 129,000 dozen in 1982 to 339,000 dozen in 1988. The ratio of imports to domestic production quadrupled, rising from 15 percent in 1982 to 62 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

All of Category 448 imports from Argentina during the first four months of 1989 entered under HTSUSA number 6204.61.0010—women's trousers of wool or fine animal hair. These trousers entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable trousers.

[FR Doc. 89–17025 Filed 7–19–89; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Request for Bilateral Textile Consultations With the Government of the United Arab Emirates

July 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On June 28, 1989, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding cotton and man-made fiber textile products in Categories 336/636 and 342/642, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on

June 28, 1989 and extends through June 27, 1990, at a level of 48,501 dozen (Categories 336/636) and 96,768 dozen (Categories 342/642).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 336/636 and 342/642, or to comment on domestic production or availability of products included in the categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 336/636 and 342/642. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—United Arab Emirates

Category 336/636—Cotton and Man-Made Fiber Dresses

June 1989.

Summary and Conclusions

U.S. imports of cotton and mad-made fiber dresses (Category 336/636) from the United Arab Emirates reached 70,656 dozen during the year ending April 1989, more than 300 times the 209 dozen imported a year earlier. Cotton and man-made fiber dress imports from the United Arab Emirates were 2,384 dozen in 1987 and 5,861 dozen in 1988. During the first four months of 1989 imports of cotton and man-made fiber dresses (Category 336/636) from the United Arab Emirates reached 64,970 dozen, nearly 400 times the January-April 1988 level and eleven times the total amount imported in calendar year 1988. The U.S. government regards with serious concern the alarming increase, over a short period of time in a sensitive category, of imports from an uncontrolled supplier.

Further, cotton and man-made fiber dresses from the United Arab Emirates enter the U.S. market at an average value 78 percent below the price of domestically produced dresses and on average 66 percent below the value of other major foreign suppliers of cotton and man-made fiber dresses to the United States market.

The levels reached by U.S. imports of cotton and man-made fiber dresses from the United Arab Emirates in the first four months of 1989, if maintained throughout the current year, reach an annualized level of nearly 195 thousand dozen.

The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at values 78 percent below the domestic price contributes to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first four months of data.

At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The U.S. government is concerned that rapidly rising imports from uncontrolled non-MFA suppliers will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under auspices of the MFA.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber dresses (Category 336/636) has been on the decline, falling from 19,843,000 dozen in 1982 to 13,338,000 dozen in 1988, a decline of 33 percent. The domestic manufacturers' share of the cotton and man-made fiber dress market fell from 91 percent in 1982 to 71 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber dresses (Category 336/636) have increased steadily since 1982, increasing from 1,933,000 dozen in 1982 to 5,493,000 dozen in 1988, an average annual rate of 19 percent. The ratio of imports to domestic production quadrupled, rising from 10 percent in 1982 to 41 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 73 percent of Category 336/636 imports from the United Arab Emirates during the first four months of 1989 entered under HTSUSA numbers 6204.42.3030—women's cotton dresses of yarn dyed fabric, other than corduroy and 6204.42.3050 women's cotton dresses, other than of yarn dyed fabric, other than corduroy. These dresses entered the U.S. at landed duty-paid values on average 78 percent below U.S. producers' prices for comparable dresses.

Market Statement—United Arab Emirates

Category 342/642—Cotton and Man-Made Fiber Skirts

June 1989.

Summary and Conclusions

U.S. imports of cotton and man-made fiber skirts (Category 342/642) from the United Arab Emirates reached 104,010 dozen during the year ending April 1989, almost 3 times the 35,893 dozen imported a year earlier. During the first four months of 1989 imports of cotton and man-made fiber skirts (Category 342/642) from the United Arab Emirates reached 42,601 dozen, 47 percent above the amount imported in the first four months of 1988. The U.S. government regards with serious concern the alarming increase, over a short period of time in a sensitive category, of imports from an uncontrolled supplier.

Further, cotton and man-made fiber skirts from the United Arab Emirates enter the U.S. market at an average value 74 percent below the value of domestically produced skirts and on average 53 percent below the value of other major foreign suppliers of cotton and man-made fiber skirts to the United States market.

The levels reached by U.S. imports of cotton and man-made fiber skirts from the United Arab Emirates in the first

four months of 1989, if maintained throughout the current year, reach an annualized level of nearly 130 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at values 74 percent below domestic prices contributes to this disruption, particularly, if the annual level of imports reaches the annualized amount indicated by the first four months of data.

At this level, the United Arab Emirates' imports would approach the import limits for these products established with major suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The U.S. government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through bilateral agreements negotiated under auspices of the MFA.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts (Category 342/642) has been on the decline, falling from 9,101,000 dozen in 1982 to a depressed 7,940,000 dozen average during 1984 and 1985, a decline of 13 percent. Production in 1986 and 1987 recovered slightly reaching 8,184,000 and 8,732,000 dozen respectively, but fell again in 1988 to 6,936,000 dozen, its lowest level since 1980, 20 percent below the 1987 level and 24 percent below the 1982 level. The domestic manufacturers' share of the cotton and man-made fiber skirt market dropped 34 percentage points in just six years, falling from 83 percent in 1982 to 49 percent in 1988.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber skirts (Category 342/642) quadrupled since 1982, increasing from 1,818,000 dozen in 1982 to 7,211,000 dozen in 1988. The ratio of imports to domestic production increased over 5 times, rising from 20 percent in 1982 to 104 percent in 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 67 percent of Category 342/642 imports from the United Arab Emirates during the first four months of 1989 entered under HTSUSA number 6204.52.2070—women's cotton skirts, other than of corduroy and of blue denim, and other than certified hand-loomed and folklore products. These skirts entered the U.S. at landed duty-paid values on average 74 percent below U.S. producers' prices for comparable skirts.

[FR Doc. 89-17026 Filed 7-19-89; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published June 21, 1989, at 54 FR 26073 that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on July 13–14, 1989 at the Center for Naval Analyses, 4401 Ford Avenue, Alexanadria, Virginia. The meeting has been canceled. In accordance with 5 U.S.C. 552b(e)(2), the meeting cancellation is publicly announced at the earliest practical time.

Date: July 17, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17012 Filed 7-19-89; 8:45 am]
BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Notice was published July 7, 1989, at 54 FR 28708 that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on July 19–20, 1989, at the Naval Strike Warfare Center, Fallon, Nevada. The agenda for the meeting has been expaned to include an Executive Session on Friday, July 21, 1989. The meeting will commence at 8:00 a.m. and terminate at 4:00 p.m. on July 21, 1989. The session will be closed to the public. All other information in the previous notice remains effective. In accordance with 5 U.S.C. 552b(e)(2), the meeting change is publicly announced at the earliest practical time.

Date: July 17, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-17013 Filed 7-19-89; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 21, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 17, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Planning, Budget, and Evaluation

Type of Review: New
Title: Evaluation of Dropout Prevention and Reentry Demonstration Projects in Vocational Education
Frequency: Biennial
Affected Public: Individuals or households; State or local governments; public schools
Reporting Burden:
Responses: 7591
Burden Hours: 1533
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will determine Vocational education, dropout rates. Demonstration projects are required to disseminate information about effective dropout prevention practices in vocational education. The Department will use the information collected to assess the accomplishments of program goals and objectives and to aid in effective program management.

Type of Review: New.
Title: Study of Programs for Retaining the Benefits of Early Childhood Education for Disadvantaged Children
Frequency: One time
Affected Public: State or local government
Reporting Burden:
Responses: 2,404
Burden Hours: 1,491
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of this study is to determine the extent of transition programs designed to improve the school performance of disadvantaged children. Data will identify and describe transition programs in public schools and develop criteria for exemplary programs.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Evaluation of the Impact of the State Vocational Rehabilitation Agency Management Control Project (MCP)
Frequency: One time
Affected Public: State or local governments
Reporting Burden:
Responses: 700
Burden Hours: 170
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The purpose of the study is to evaluate the impact of the Management Control Project (MCP) adopted by State Vocational Rehabilitation agencies. The information collected from state agency counselors and supervisors will be used to determine the effectiveness of the state agencies in achieving the goals of the MCP for effective and efficient delivery of services of eligible clients.

Type of Review: Extension.
Title: Annual Report on State Agency Independent Living Rehabilitation Services Title VII, Part A
Frequency: Annually
Affected Public: State and local governments
Reporting Burden:
Responses: 79
Burden Hours: 632
Recordkeepers: 0
Burden Hours: 0
Abstract: This information will be used to analyze and evaluate the Independent Living Rehabilitation (ILR) services provided by State ILR agencies funded under Title VII, Part A of the Rehabilitation Act, as amended.

Office of Postsecondary Education

Type of Review: Extension.
Title: New and Continuation Application for Grants Under Educational Opportunity Centers Program
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions; Small Businesses or organizations
Reporting Burden:
Responses: 41
Burden Hours: 615
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State agencies to apply for funding under the Educational Opportunity Centers program. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Existing.
Title: Chapter 1—Migrant Education Coordination Program for State Educational Agencies Interstate and Intrastate Coordination of Migrant Education Activities
Frequency: Triennially
Affected Public: State or local governments
Reporting Burden:
Responses: 40
Burden Hours: 1600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The information is used as a basis for awarding grants to State educational agencies who individually or cooperatively through a group or consortium of states operate special projects to improve the interstate and intrastate migrant education program coordination activities.

Type of Review: Revision.
Title: Application for Grant under the Indian Education Act
Frequency: Annually
Affected Public: State or local governments
Reporting burden:
Responses: 1500
Burden Hours: 45,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This application will be used by state and local agencies to apply for funding under the Indian Education Act. The Department uses the information to make grant awards.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Application for a Research and Development Centers Program Grant
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 42
Burden Hours: 3600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by public or private organizations, institutions of higher education and individuals to apply for research and development grants under the Research and Development Centers Program. The Department uses the information to make grant awards.

[FR Doc. 89–17050 Filed 7–19–89; 8:45 am]
BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

Intent to repay to the Pennsylvania State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Pennsylvania State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the Philadelphia School District (PSD), the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before August 21, 1989.

ADDRESSES: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732–4694.

SUPPLEMENTARY INFORMATION:

A. Background

In December 1985, the Department recovered $2,318,060 from the Pennsylvania SEA in satisfaction of a claim arising from a fiscal year (FY) 1973 audit. This claim involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965, a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the Philadelphia LEA's FY 1973 Title I application was approved by the SEA despite the fact that not all schools in the LEA were in compliance with Title I comparability requirements. Those requirements provided that an LEA could receive Title I funds only if it used its State and local funds in the Title I project areas to provide services that "taken as a whole, [were] at least comparable to services being provided in [non-Title I] areas * * *" 20 U.S.C. 241e(a)(3)(C) (1976).

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $1,738,545 and has submitted a plan on behalf of the Philadelphia LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (Chapter 1), as amended by Public Law 100–297. Although the final audit determination resulted from improper expenditures of Title I funds, that program has been repealed. Chapter 1 is a successor program that, like Title I, is designed to serve educationally deprived children in low-income areas.

Under the SEA's plan, activities are proposed for 72 elementary schools and 25 middle schools that would supplement the regular Chapter 1 program provided by the LEA. These sites include 33 schools that were not comparable according to the audit and 64 similar sites that serve high concentrations of children from low-income families. Educationally deprived children in 34 nonpublic schools who are eligible for Chapter 1 services would also benefit from the grantback funds.

The activities in the SEA's plan include: (1) An incentive program to recruit new teachers to certain Chapter 1 project sites and to provide staff development and support that will equip these teachers with the necessary skills to meet the special needs of Chapter 1 children; (2) additional staff development regarding instructional strategies for at-risk students; and (3) parent involvement activities to increase the support of learning activities in the home.

The incentive program for new teachers would address the teacher vacancy and turnover problem in Chapter 1 schools. These schools have twice the number of new teachers and three times the teacher turnover each year of other schools in the LEA. This creates several problems that affect the success of Chapter 1 children. First, these students have a much greater-than-average chance of being taught by a new teacher with little experience in addressing needs of educationally deprived children. Second, because of a shortage of teachers, it is in these schools that vacancies are likely to go unfilled. This puts Chapter 1 students at much higher-than-average risks of being taught either by a long-term substitute or by a string of per diem substitutes.

An amount of $715,861 would be used to provide an incentive package to recruit new teachers to Chapter 1 schools and to provide support that would equip the teachers with the necessary skills to address the special needs of educationally deprived children. This package would consist of staff development in August and September to be led by experienced teachers; instructional materials, supplies, and reference materials that most experienced teachers build up gradually over the years; and mentoring that would be focused on setting up the classroom and developing instructional strategies in ways that would support the success of Chapter 1 students.

The incentive package would be offered to all prospective teachers (new and temporarily assigned) who sign up to fill vacancies in the Chapter 1 schoolwide project sites and to those signing up to fill Chapter 1 vacancies in the other elementary grantback project sites.

There is an ongoing program in the 25 middle schools that is funded by regular Chapter 1 funds for at-risk students. This program features reduced class size, team teaching, and an ungraded, interdisciplinary approach for children who have twice failed to meet promotion requirements. The LEA would spend $34,639 of the grantback funds to provide central staff development for five Chapter 1 teachers form each of the 25 sites regarding instructional strategies that meet the special needs of these adolescent at-risk students and strategies for effective communication with parents. These teachers and one

classroom assistant from each site would also be provided on-site planning time to maximize teamwork and to support the interdisciplinary nature of the program.

The parent involvement component would be initiated with grantback funds at a cost of $893,423. One of the activities in this component would be a take-home computer program for participating Chapter 1 children at 14 Chapter 1 schools. The parents would be trained to use the computers with their children to provide ongoing learning-related activities at home, so as to communicate the value of learning and increasing basic skills. Each of the 14 sites would receive a package consisting of 25 take-home computers, training, and software. The software would be tailored to the needs of the participating children.

In addition, in 61 elementary schools, all of which operate Chapter 1 schoolwide projects, grantback funds would be used to equip parent communication centers to support meaningful parent involvement. Meeting the requirements regarding parent participation in these schools is especially demanding and the need is great. These project sites are not currently technologically equipped to maximize communication with parents. A telephone and telephone line would be installed at each site to be used exclusively for contacts between staff and parents to support communication about goals and progress of the children and to enhance the home/school connection.

Finally, for the at-risk students in the 25 middle schools, Chapter 1 teachers would make visits during the months of August and September to the homes of participating Chapter 1 students. The purpose of these visits would be to enable the teachers to establish a personal relationship with each student and his or her family, establish expectations about the student's progress, identify ways that the family could support the student's learning, and create a climate conducive to ongoing exchange throughout the school year.

The balance of the grantback funds would be applied to indirect costs.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Pennsylvania SEA under a grantback arrangement. The grantback award would be in the amount of $1,738,545, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the final audit determination.

F. Terms and Conditions Under Which Payments Under A Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: July 13, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

[FR Doc. 89-16974 Filed 7-19-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Award on a Noncompetitive Basis; American Wind Energy Association

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through its SERI Area Office (SAO), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the American Wind Energy Association (AWEA). The objective of the work to be supported by this cooperative agreement is the development and promulgation of industry-based consensus test standards for wind energy systems.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen L. Sargent, U.S. Department of Energy, SERI Area Office, 1617 Cole Boulevard, Golden, CO 80401, (303) 231-1366.

SUPPLEMENTARY INFORMATION: The American Wind Energy Association is composed primarily of companies in the wind energy business. One function of AWEA is to develop standards covering a variety of subjects affecting the wind energy industry, such as performance testing, acoustics, installation, siting, operation safety, and interconnection. Standards are drafted by individual subcommittees, reviewed by the Standards Coordinating Committee, then sent to the AWEA membership for a vote on adoption as a consensus standard. Modifications to existing standards are handled in a similar fashion. AWEA is the only known organization that develops and promulgates standards for the wind energy industry. Therefore, the cooperative agreement renewal application is being accepted by DOE because it knows of no other organization which is conducting or planning to conduct this type of activity.

The project for the cooperative agreement renewal is one year, expected to begin in July 1989. DOE

plans to provide funding in the amount of $64,306 for this project period.

Issued in Chicago, Illinois on June 30, 1989.

Timothy S. Crawford,

Assistant, Manager for Administration.

[FR Doc. 89-17064 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance; Coalition of Northeastern Governors

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the Coalition of Northeastern Governors (CONEG) to organize and carry out a Regional Biomass Program in the Northeast Area of the Northern Tier States. The grant renewal will continue the project through 8/8/90. The estimated amount is $335,000.

Procurement Request No.: 05-890R21389.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Northeast Area of the Northern Tier States. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CONEG has the unique capability to equally represent all of the states in the Northeast subregion and involve the appropriate private and public interest groups in the states. CONEG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this award is, therefore, restricted to CONEG.

FOR FURTHER INFORMATION CONTACT: Lynda H. McLaren, Research Management Branch, Research and Laboratory Waste Management Div., U.S. Department of Energy, Oak Ridge, TN 37831-8621, (615) 576-1763.

Issued in Oak Ridge, Tennessee, on July 7, 1989.

Robert E. Lynch,

Acting Director,

Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-17068 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance for Cooperative Agreement Award; Commercial Vehicle Safety Alliance

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance for cooperative agreement award.

SUMMARY: The Department of Energy (DOE) Chicago Operations Office announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it is pursuing a noncompetitive financial assistance award renewal of a cooperative agreement with the Commercial Vehicle Safety Alliance (CVSA). Under the terms of the cooperative agreement, the CVSA provides the DOE with services for the development of standards and procedures for inspecting truck shipments of spent nuclear fuel and high-level radioactive waste. In addition, the cooperative agreement will be amended to allow the CVSA to contract with appropriate State agencies to conduct a pilot study of the CVSA's proposed procedures for inspecting highway vehicles transporting spent fuel and high-level radioactive waste.

FOR FURTHER INFORMATION CONTACT: John M. Willis, RTTD, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439. (312) 972-2518

SUPPLEMENTARY INFORMATION: The Transportation Program of the DOE's Office of Civilian Radioactive Waste Management (OCRWM) addresses a mandate of the Nuclear Waste Policy Act (NWPA), which requires the DOE to establish a safe, secure, and efficient transportation system for moving spent nuclear fuel and high-level waste. To that end, the DOE requires the cooperation of and input from, among others, representatives of State Governments.

The CVSA, whose membership includes representatives from 46 States and 10 Canadian territories and provinces, is the only association of State agencies responsible for conducting commercial vehicle inspections. The DOE's purpose for renewing the cooperative agreement is to enable it to continue to interact directly with the transportation industry and the States through their memberships in the CVSA, in developing standards for inspection of highway truck shipments of spent fuel and high-level nuclear waste. Prior to the cooperative agreement, which has been in effect since 1986, the CVSA had conducted similar work on hazardous materials transportation for the Department of Transportation. Moreover, the CVSA has already submitted to the DOE a draft of highway vehicle inspection procedures, and renewal of the cooperative agreement to provide for validation of those procedures would be a logical extension of the work performed to date.

The CVSA has proposed to contract with appropriate agencies within a core group of States in order to conduct the pilot study. The agencies selected by CVSA will represent State vehicle safety, inspection and/or enforcement agencies, and will have the ability to meet the requirements for a valid test of the draft inspection procedures.

Eligibility for renewal of the cooperative agreement award is being restricted to CVSA because of its past experience with the DOE and its unique institutional ties and expertise. The estimated total cost of the 60-month cooperative agreement with CVSA is $1,488,521. The proposed award date is September 1, 1989.

Issued in Chicago, Illinois, on July 6, 1989.

Edwin H. Hendricks,

Acting Assistant Manager for Administration.

[FR Doc. 89-17065 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance; University of Utah

AGENCY: Nevada Operations Office, DOE.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that purusant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award, in conjunction with the Defense Nuclear Agency, a noncompetitive financial assistance cooperative agreement for a research program to be conducted at the Environmental Radiation & Toxicology Laboratory of the University of Utah to conduct a baseline study of plutonium in human urine within the United States and relate these data to human metabolism of plutonium from environmental sources.

The Environmental Radiation & Toxicology Laboratory at the University of Utah has developed the ability to measure plutonium in human urine at concentrations of 0.0001 picocuries per daily sample using a fission track analysis technique. This award will provide funds to continue development of the technique and apply it to measuring background concentrations of plutonium in human urine in the United States. During the years of atmospheric testing of nuclear weapons an estimated 500 tons of plutonium were deposited

worldwide. This plutonium cannot be measured in bioassay samples by traditional analytical means because of the extremely low concentrations of plutonium in urine. In order to assess the uptake of plutonium from accidental exposures of people, it is necessary to determine the background levels resulting from environmental contamination.

Project Scope: The University of Utah will develop a data base of background concentrations of plutonium in urine in residents of the United States designated by age, sex, location of residency, and concentration of plutonium in the soil. They will study the variability of plutonium in urine measurements resulting from sampling procedures and lifestyles of the participants. It is necessary to understand the variability within samples from single individuals and variability between individuals in the same contaminated environment.

The University will develop metabolic models for the excretion of plutonium in urine based on the results of the baseline study. They will also perform interlaboratory comparisons with Brookhaven National Laboratory and other research facilities that may develop the ability to measure plutonium at these ultralow concentrations.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because of the unique technique that has been developed through Department of Energy funding. No other research facility, outside of the Department of Energy system, has demonstrated the capability of measuring plutonium in urine at environmental levels, which is required in order to provide the baseline data base.

The term of this cooperative agreement is for five years and will commence October 1, 1989, and end September 30, 1994. The total estimated cost of this award is $2.6 million.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: David L. Wheeler, P.O. Box 78518, Las Vegas NV 89193–8518.

Issued in Las Vegas, Nevada, on June 28, 1989

Nick C. Aquilina,

Manager.

[FR Doc. 89–17066 Filed 7–19–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Special Reseach Grant Program Notice 89–7]

Global Survey of Carbon Dioxide in the Ocean

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support of global survey of carbon dioxide in the ocean in conjunction with the World Ocean Circulation Experiment Hydrographic Program (WOCE/HP) Cruises. This notice requests applications for grants to support: (1) the acquisition of CO_2 data at sea and (2) analyses of total carbon dioxide in replicate water samples by precision manometry at a shore-based laboratory. Applicants may apply for Special Research grants to conduct at-sea measurements and/or land-based manometry.

Consortia are encouraged to submit coordinated proposals in order to consolidate scientific resources, equipment, and personnel for (1) and (2) above. It is anticipated that up to three grants for measurements at sea (see (1) above) will be awarded for a three- to five-year period beginning in early 1990. One award is anticipated for the shore-based laboratory measurements (see (2) above). Some of the funds being set aside for this program may be used to support research at DOE laboratories.

DATES: The first WOCE cruise will be in the Pacific Ocean, aboard the NOAA R/V Discoverer. The cruise will most likely begin in January 1990 and will include approximately 60 days at sea. A section of hydrographic stations from Hawaii to 60° S along 150° W will be made. A second cruise is being planned for late FY 1990 which will include a leg from Central America to 50° S along 90° W. In order to participate in the first cruise, grant applications for at-sea CO_2 measurements must be received by the Division of Acquisition and Assistance Management prior to August 10, 1989. Applications for grants to perform shore-based CO_2 measurements on replicate water samples and for WOEC cruises beginning after June 1990 must be received by DOE prior to October 10, 1989.

ADDRESS: Completed applications referencing Program Notice 89–7 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Room G–232, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT: Dr. Ari Patrinos, Carbon Dioxide Research Program, Office of Health and Environmental Research, ER–74, Washington, DC 20545, (301) 353–4375.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Carbon Dioxide Research Program is to quantify the uptake of atmospheric CO_2 by the ocean and to make estimates of future atmospheric concentrations resulting from fossil fuel combustion. The purpose of the global carbon dioxide survey is to provide a data set to characterize the global distribution of CO_2 in the oceans in support of the U.S. Global Ocean Flux Study (GOFS) Program. A global description of CO_2 chemistry will provide essential data for the development of a three-dimensional model of the ocean carbon cycle, a critically needed tool for predicting future atmospheric CO_2 concentrations.

This notice requests applications for grants to support: (1) The acquisition of CO_2 data at sea and/or (2) analyses of total carbon dioxide in replicate water samples by precision manometry at a shore-based laboratory as described below.

(1) Successful applicants for grants to make at-sea measurements will provide personnel and equipment to perform accurate measurements of total alkalinity, total dissolved carbon dioxide, and/or carbon dioxide partial pressure in small-volume water samples aboard WOCE/HP research vessels. The interim primary technique for measuring total carbon dioxide will be CO_2 coulometry. Instruments will be calibrated at sea with interim standards. Because coulometry is the subject of active scientific research, the successful applicant will be expected to attend a comprehensive training course on the technique and to be familiar with interim protocols for handling and analyzing samples at sea. Training, interim protocols, and interim standards will be provided to the successful applicant by DOE prior to the FY 1990 WOCE/HP cruises. Secondary analytical techniques may be proposed for simultaneous research and evaluation with the ultimate purpose of improving the accuracy and efficiency of CO_2 analyses on later WOCE/HP cruises.

(2) The successful applicant will make replicate analyses on up to 10% of water samples taken during the at-sea measurements (see (1) above) at a

shore-based laboratory using an approved precision manometric method so that CO_2 data from the WOCE/HP surveys will be comparable to data from previous oceanographic expeditions. The applicants for a grant to perform these analyses must have established laboratory instrumentation for precision manometry and extensive experience with CO_2 analysis in sea water.

It is essential that the global CO_2 measurements be made simultaneously with the WOCE/HP surveys so that carbon fluxes can be estimated from synoptic hydrographic data. The projected level of effort for the WOCE/HP global survey is as follows:

	Work stations	Samples
Atlantic Ocean	1,400	49,500
Pacific Ocean	2,300	80,700
Indian Ocean	1,100	37,500
Southern Ocean	350	12,600
Totals	5,150	180,300

This level may be modified to reflect the actual level of the WOCE field program.

To help ensure that consistency and quality of the CO_2 data are maintained during the WOCE/HP cruises, successful applicants in (1) and (2) above will compose a project Science Team to aid communications and information transfer.

About $1,000,000 has been requested in FY 1990 to fund (1) carbon dioxide measurements on WOCE/HP cruises in FY 1990; (2) replicate total carbon dioxide analyses by precision manometry; (3) formulation of interim protocols for at-sea analyses; (4) training on CO_2 coulometry; and (5) preparation of interim standards. Activities (3), (4), and (5) will be conducted by DOE National Laboratory. Funding for at-sea measurements ((1) above) during FY 1991 and succeeding years will depend on the WOCE/HP cruise schedules and the resources required for scientific and logistical support for CO_2 measurements. It is anticipated that funding could reach a maximum of $2,000,000 per year at some time during the three- to five-year program. Continuation of the Global CO_2 Surveys beyond FY 1990 is contingent upon availability of funds.

Information abourt submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in the OER Application and Guide for the Special Research Grants Program 10 CFR Part 605. The application kit and guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, Washington, DC 20545. Telephone requests may be made by calling (301) 353-3213. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on June 1989.

June 30, 1989.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89-17069 Filed 7-19-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EC89-14-000, et al.]

New England Power Service Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Service Company

[Docket No. EC89-14-000]

July 7, 1989.

Take notice that on June 30, 1989, New England Power Service Company (NEP) tendered for filing an application for the sale of electric facilities by NEP to the Town of West Boylston, Massachusetts. NEP requests approval for this sale pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations.

Comment date: July 27, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER86-558-022]

July 7, 1989.

Take notice that on June 8, 1989, Gulf States Utilities Company (Gulf States) tendered for filing its refund compliance report in response to a letter from the Commission dated May 1, 1989.

Comment date: July 24, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Western Area Power Administration

[Docket No. EF89-5031-000]

July 7, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of The Department of Energy, by Rate Order No. WAPA-35, did confirm and approve on an interim basis, to be effective on the first day of the October 1989 billing period, Western Area Power Administration's (Western's) power rate Schedules P-SED-F3 and P-SED-FP3 for the Pick-Sloan Missouri Basin Program (P-SMBP). The power rates will be in effect pending the FERC's approval of them or substitute rates, or until superseded.

The fiscal year 1987 power repayment study indicated that the existing rates do not yield sufficient revenue to satisfy the cost recovery criteria through the study period. The revised rate schedules will yield adequate revenue to satisfy these criteria. A comparison of the proposed rates to the existing rates is as follows:

Eastern Division

Existing class of power	Existing rate	Proposed rate	Absolute change	Percentage change
Firm capacity $/kW-month	$1.65	$1.85	+0.20	+12.1
Firm energy up to and including 60-percent monthly load factor, mills/kWh	4.41	5.06	+0.65	+14.7
Above 60-percent monthly load factor, mills/kWh	7.79	8.44	+0.65	+8.3
Peaking capacity, $/kW-season	9.90	11.10	+1.20	+12.1
Peaking energy, mills/kWh	4.41	5.06	+0.65	+14.7
Seasonal firm				

Western Division

The rate schedules for the P-SMBP-Western Division are associated with the Post-1989 Marketing Criteria which goes into effect on the first day of the October 1989 billing period and will be the subject of a subsequent and separate formal rate adjustment procedure.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles. The rate schedule is submitted by the Deputy Secretary for confirmation and approval on a final basis for a 5-year period of time,

pursuant to authority vested in the Federal Energy Regulatory Commission by Delegation Order No. 0204–108, as amended.

Comment date: July 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Western Area Power Administration

[Docket No. EF89–[5]–000]

July 7, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–42, did confirm and approve, on an interim basis, to be effective beginning on July 1, 1989, Rate Schedule SP–FT3 for firm transmission service on the Colorado River Storage Project (CRSP) system.

Rate Schedule SP–FT3 will be in effect on an interim basis pending the Federal Energy Regulatory Commission (FERC) approval of it or a substitute rate on a final basis.

The transmission-rate study, based on the fiscal year 1988 final CRSP power repayment study, indicates a firm transmission rate of $21.72 per kilowatt-year (kW-year) is needed to recover the cost of planned transmission facilities investment and associated operation, maintenance, and replacement costs. This is a 36.63 percent increase from the current rate of $15.94/kW-year. This increase will result in an expected average yearly increase in CRSP revenues of $789,597. The Administrator of the Western Area Power Administration certifies that the rate is consistent with applicable laws and that it is the lowest possible rate consistent with sound business principles.

The Deputy Secretary states that the rate schedule is submitted for confirmation and approval on a final basis for a 3-year period beginning July 1, 1989, and ending June 30, 1992, pursuant to the authority vested in the FERC by Delegation Order No. 0204–108.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Vermont Electric Power Company, Inc.

[Docket No. ER88–447–000]

July 7, 1989.

Take notice that on June 30, 1989, Vermont Electric Power Company, Inc. (VELCO) tendered for filing an Amendment to Supplement No. 1 to FERC Rate Schedule No. 235 and an Amendment to Supplement No. 3 to FERC Rate Schedule No. 240, Rate Schedules that provide for the allocation of transmission capacity on the VELCO system among Vermont distribution utilities. At the same time, VELCO also filed an Exhibit A to FERC Rate Schedule No. 235 and an Exhibit A to FERC Rate Schedule 240. The new Exhibits set forth allocations of transmission capacity as of December 31, 1989.

VELCO proposes that the Amendments become effective on July 1, 1989. VELCO requests a waiver of the Commission's Regulations to allow the filings to become effective as of that date. If the waiver is granted, VELCO states that there will be no adverse effect upon any of VELCO's customers. If the waiver is not granted, VELCO requests that the filings become effective on September 1, 1989 or on such other date as the Commission deems appropriate.

VELCO states that it has served the filings upon the Vermont Public Service Board and upon VELCO's transmission customers: Allied Power and Light Company, Barton Village, Inc., The City of Burlington Electric Department, Central Vermont Public Service Corporation, Citizens Utilities Company, Village of Enosburg Falls Water Light Department, Franklin Electric Light Company, Green Mountain Power Corporation, Village of Hardwick Electric Department, Village of Hyde Park, Inc., Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water and Light Department, Village of Northfield Electric Department, Village of Orleans Electric Department, Village of Readsboro Electric Light Department, Rochester Light and Power Company, Village of Stowe Water and Light Department, Village of Swanton, Vermont Department of Public Service, Vermont Electric Cooperative, Vermont Electric Generation and Transmission Cooperative, Inc., Vermont Marble Company, Vermont Public Power Supply Authority, and Washington Electric Cooperative, Inc.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp, Doing Business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89–356–000]

July 7, 1989.

Take notice that on June 21, 1989, PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company (PacifiCorp), tendered for filing, in accordance with 18 CFR 35.12 of the Commission's Rules and Regulations, an amendment to its filing of the South Idaho Exchange Agreement (Agreement), Contract No. DE–MS79–89BP992524 dated February 13, 1989 under the docket Reference above.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on February 13, 1989, corresponding to the effective date of the Agreement.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Company

[Docket No. ER89–417–000]

July 7, 1989.

Take notice that on June 14, 1989, Arkansas Power & Light Company (AP&L) tendered for filing an informational letter stating that an error had been found in the transmission rate redetermination for Louisiana Energy & Power Authority in the above docket in the cost of capital (variable D) which resulted from an overstatement of interest on the obligation to the Department of Energy for spent nuclear fuel. AP&L states that correction of this error created a small reduction in the monthly transmission demand rate.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER89–482–000]

July 7, 1989.

Take notice that on June 16, 1989, as supplemented on June 19, 1989, Louisville Gas and Electric Company tendered for filing in this docket clarifying information concerning the price provisions of Supplement No. 7 to the Interconnection Agreement between Louisville Gas and Electric Company and East Kentucky Power Cooperative and clarifying information concerning the price provisions of the Initial Interconnection Agreement between Louisville Gas and Electric Company and Indiana Municipal Power Agency.

Comment date: July 25, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Public Service Company

[Docket No. ES89–30–000]

July 12, 1989.

Take notice that on July 3, 1989, Central Illinois Public Service Company (Applicant), filed an application with the Federal Energy Regulatory Commission (Commission), pursuant to Section 204 of the Federal Power Act, seeking

authorization to issue from time to time short-term debt obligations in the aggregate maximum principal amount not exceeding $120,000,000 outstanding at any time with final maturities not later than December 31, 1991.

Comment date: August 2, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Geothermal Energy Partners Ltd.

[Docket No. QF89-47-002]

July 12, 1989.

On July 3, 1989, Geothermal Energy Partners, Ltd. (Applicant), c/o Western Geothermal Company, 38 Executive Park, Irvine, CA 92714, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately seven miles east of Cloverdale, California, in the northwest quarter of Section 5 of Township 11 North, Range 9 West, Mt. Diablo Base and Meridian, Sonoma County, California. The facility will consist of two units, each of which will include a steam turbine-generator and associate ancillary equipment. The primary energy source of the facility will be geothermal steam. The net electric power production capacity of the facility will be 20 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

11. BASF Corporation

[Docket No. QF89-282-000]

July 12, 1989.

On July 3, 1989, BASF Corporation (Applicant), of 100 Cherry Hill Road, Parsippany, NJ 07054 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at 602 Copper Road, Freeport, Texas 77541. The facility will consist of combustion turbine generator, a heat recovery steam generator and a back pressure steam turbine generator. The thermal energy recovered from the facility will be used for chemical process application at the BASF Corporation. The net electric power production capacity of the facility will be 49 MW. The primary source of energy will be natural gas. The installation of the facility is expected to commence in the fourth quarter of 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17041 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1681-000, et al.]

Great Lakes Gas Transmission Company, et al.; Natural Gas Certificate Filings

July 14, 1989.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP89-1681-000]

July 7, 1989.

The "Notice of Request Under Blanket Authorization" issued July 3, 1989, in Docket No. CP89-1681-000 should be changed to read "Re-Notice of Application." As corrected the notice reads as follows:

Take notice that on June 23, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226 filed in Docket No. CP89-1681-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of Western Gas Marketing U.S.A. Ltd. (WGM), until August 31, 1993, all as more full set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that WGM has requested two services from Great Lakes. In the first, Great Lakes indicates that it would transport up to 250,000 Mcf per day for the account of WGM, from a point on the International Border between the United States and Canada, at Emerson, Manitoba (Emerson Receipt Point), where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipelines Limited (TransCanada), to (1) an existing point of interconnection between the facilities of Great Lakes and TransCanada located at a point on the International Border at Sault Ste. Marie, Michigan (Sault Ste. Marie Delivery Point), and (2) an existing point of interconnection between the facilities of Great Lakes and Michigan Consolidated Gas Company (MichCon), located at Belle River Mills, Michigan (Belle River Mills Delivery Point).

In the second service, Great Lakes states that it would during the summer period (April 1 to October 31), transport up to 30,000 Mcf per day from the Emerson Receipt Point to the Belle River Mills Delivery Point. Great Lakes further states that MichCon would store such volumes for WGM. Great Lakes indicates that during the winter period (November 1 to March 31), it would receive the storage volumes from MichCon at the Belle River Mills Delivery Point and deliver an equivalent quantity of volumes for the account of WGM at the Sault Ste. Marie Delivery Point.

Great Lakes states that WGM and Great Lakes have entered into two transportation service agreements, each dated June 1, 1989 (Agreement No. 1 and Agreement No. 2), which implement these arrangements. Great Lakes further states that these Agreements provides for a term ending Agust 31, 1993.

Great Lakes indicates that both Agreements provide for a rate for the transportation service to the Belle River Mills Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in Rate Schedule T-4 of Great Lakes FERC Gas Tariff, under which volumes are also transported from the Emerson Receipt Point to Great Lakes Eastern Zone.

Great Lakes asserts that Agreement No. 1 provides for a rate for the transportation service to the Sault Ste. Marie Delivery Point which is equal to the 100% load factor rate as determined from the demand and commodity components utilized in the transportation component of existing

Rate Schedule CQ–2 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transporated from the Emerson Receipt Point to Great Lakes' Central Zone. It is stated that no new facilities would be required to provide either of the services.

Great Lakes states that WGM or its sales customers have entered into the contractual arrangements with MichCon for the transportation of volumes from Belle River Mills to points of interconnection between the facilities of MichCon and the end users who will purchase the subject volumes from WGN; and WGM has entered into the contractual arrangements with MichCon related to the storage of volumes. Great Lakes further states that WGM has entered into arrangements with various end users in Michigan and in Canada (near Sault Ste. Marie, Ontario), for the sale of the subject volumes.

Comment date: July 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP89–1693–000]

July 7, 1989.

Take notice that on June 28, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–1693–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Enogex Services Corporation (Enogex), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated January 3, 1989, Natural requests authority to transport up to 100,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for Enogex. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to deliver the gas to various existing points of delivery along its system. Enogex has informed Natural that is expects to have only 25,000 MMBtu of gas transported on an average day and, based thereon, estimates that 9,120,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on May 1, 1989, as reported in Docket ST89–4020, pursuant to § 284.223 of the Commission's Regulations.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–1726–000]

Take notice that on June 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1726–000, an application pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Trinity Pipeline, Inc. a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 30,000 MMBtu per day for Trinity Pipeline, Inc. through existing facilities. Construction of facilities will not be required to provide the proposed service. Service under § 284.223(a) commenced May 15, 1988, as reported in Docket No. ST89–3853–000 (filed June 8, 1988).

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89–1727–000]

July 7, 1989.

Take notice that on June 30, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–1727–000, an application pursuant to §§ 57.205 and 284.223 of the Commission's Regulations for authority to transport natural gas on behalf of Tamarack Energy, Inc., a marketer of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to transport up to 600 MMBtu per day for Tamarack Energy, Inc. through existing facilities. Construction of facilities will not be required to provide the proposed service. Service under § 284.223(a) commenced May 26, 1989, as reported in Docket No. ST89–3899–000 (filed June 15, 1989).

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89–1729–000]

July 7, 1989.

Take notice that on July 3, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP89–1729–000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Yuma Gas Corporation (Yuma), a marketer of natural gas, under Tennessee's blanket certificate, issued in Docket No. CP87–115–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated May 23, 1989, it proposes to transport natural gas for Yuma from points of receipt located Offshore Louisiana to two (2) delivery points interconnecting with Creole Gas Pipeline at Yscloskey and Shell Oil Company at Yscloskey, both points in St. Bernard Parish, Louisiana. The state of ultimate delivery is Louisiana. Tennessee further states that the volumes of gas to be delivered are 5,000 dt equivalent on an average day, 5,000 dt equivalent on a peak day, and 1,825,000 dt equivalent on an annual basis, and that service commenced under § 284.223(a) on June 3, 1989, as reported in Docket No. ST89–3997, filed June 26, 1989.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Stingray Pipeline Company

[Docket No. CP89–1730–000]

July 7, 1989.

Take notice that no July 3, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1730–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Eagle Natural Gas Company (Eagle), a shipper and marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March

23, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Eagle. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced May 10, 1989, as reported in Docket No. ST89-3854-000. Stingray further advises that it would transport 30,000 dt on an average day and 10,950 dt annually.

Comment data: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP89-1732-000]

July 7, 1989.

Take notice that on July 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1732-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Tejas Power Corporation (Tejas), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated May 12, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Tejas. Trunkline states that it would transport the gas received from Anadarko at East Cameron 359, offshore Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas, less fuel and unaccounted for line loss, to Stringray Subsea at East Cameron 338, offshore Louisiana.

Trunkline advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3981-000. Trunkline further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Comment data: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP89-1738-000]

July 7, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79979, filed in Docket No. CP89-1738-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for BP Gas Inc. (BP), broker, under the blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that pursuant to a transportation service agreement dated March 29, 1989 under its Rate Schedule T-1, it proposes to transport up to 263,750 MMBtu per day equivalent of natural gas for BP. El Paso states that it would transport the gas from any receipt point on its system, as provided in Exhibit "A" of the transportation agreement, and would deliver the gas to delivery points in the states of Oklahoma, Texas and New Mexico, as shown in Exhibit "B" of the agreement.

El Paso advises that service under § 284.223(a) commenced May 13, 1989, as reported in Docket No. ST89-3865-000. El Paso further advises that it would transport 10,550 MMBtu on an average day and 3,850,750 MMBtu annually.

Comment date: August 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Colorado Interstate Gas Company

[Docket No. CP89-1750-000]

July 11, 1989.

Take notice that on July 7, 1989, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1750-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc. (PSI), a marketer, under the blanket certificate issued in Docket No. CP86-589, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated October 1, 1988, under its Rate Schedule T1-1, it proposes to transport up to 25,000 Mcf per day of natural gas for PSI. CIG states that it would transport the gas from an existing point of receipt on its system in Sweetwater County, Wyoming, and would redeliver the gas, less fuel gas and lost and unaccounted for gas, for the account of PSI in Sweetwater County, Wyoming.

CIG advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3559-000. CIG further advises that it would transport 20,000 Mcf on an average day and 7.3 Bcf annually.

Comment date: August 25, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Williams Natural Gas Company

[Docket No. CP89-1716-000]

July 12, 1989.

Take notice that on June 29, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1716-000 a request pursuant to § 157.205 of the Commissions Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Pacific Resources Company (Union Pacific), a natural gas producer, under its blanket authorization issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for Union Pacific, pursuant to an interruptible transportation service agreement dated May 5, 1989 (Reference No. TR-A0075). The transportation agreement is effective for a term until June 1, 1990, and month-to-month thereafter unless terminated by either party on ten days written notice. Williams proposes to transport approximately 18,000 MMBtu of natural gas on a peak day; 9,400 MMBtu on an average day; and on an annual basis 3,431,000 MMBtu of natural gas for Union Pacific. Williams proposes to receive the subject gas at various points located in the state of Wyoming for delivery to various points on Williams' pipeline system located in the states of Kansas, Missouri and Nebraska.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on May 6, 1989, as reported in Docket No. ST89-3804-000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Company of America

[Docket No. CP89–1720–000]

July 12, 1989.

Take notice that on June 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–1720–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Apache Corporation (Apache), under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Apache from receipt points located in Louisiana, offshore Louisiana, Oklahoma, Illinois, Kansas, Texas, offshore Texas, and Wyoming to delivery points located in Texas, Oklahoma, offshore Louisiana and Illinois. Natural anticipates transporting, on an average day 30,000 MMBtu and an annual volume of 10,950,000 MMBtu.

Natural states that the transportation of natural gas for Apache commenced May 1, 1989, as reported in Docket No. ST89–4062–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86–582–000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Natural Gas Pipeline Company of America

[Docket No. CP89–1724–000]

July 12, 1989.

Take notice that on June 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89–1724–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Eron Gas Marketing Inc. (EGM), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated September 28, 1988, as amended, Natural requests authority to transport up to 200,000 MMBtu of gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS), on an interruptible basis, for EGM. Natural states that the agreement provides for it to receive the gas at various existing points of receipt along its system and to deliver the gas to certain utility and interstate pipeline companies at existing points of delivery located in Illinois. EGM has informed Natural that it expects to have only 50,000 MMBtu of gas transported on an average day and, based thereon, estimates that 18,250,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on May 1, 1989, as reported in Docket ST89–4161, pursuant to § 284.223 of the Commission's Regulations.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Natural Gas Pipeline Company of America

[Docket No. CP89–1728–000]

July 12, 1989.

Take notice that on July 3, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1728–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips), a gatherer/processer of natural gas, under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Phillips, pursuant to an interruptible transportation service agreement dated May 6, 1988. The transportation agreement is effective for a primary term ending September 30, 1988, and shall continue month to month thereafter unless terminated by five days prior notice by either party. Natural proposes to transport up to a maximum of 25,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Phillips advised Natural that the volume anticipated to be transported on an average day is 20,000 MMBtu; and based on that average day figure, and annual volume to be transported is 7,300,000 MMBtu. Natural proposes to receive the subject gas at various points located in the states of Oklahoma and Texas and the delivery points are located in the state of Illinois. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced self-implementing service on May 4, 1989, as reported in Docket No. ST89–4077–000.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Trunkline Gas Company

[Docket No. CP89–1733–000]

July 12, 1989.

Take notice that on July 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1733–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Consumers Gas Marketing, Inc. (Consumers), a marketer, under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated February 2, 1989, it proposes to receive up to 8,000 dt equivalent of natural gas per day from Consumers at specified receipt points located in Illinois, and offshore and onshore Louisiana and Texas and redeliver the gas at a specified point in Douglas County, Illinois. Trunkline estimates that the peak day volumes, average day volumes, and annual volumes would be 8,000 dt equivalent of natural gas, 5,000 dt equivalent of natural gas, and 1,825,000 dt equivalent of natural gas, respectively. It is stated that on June 5, 1989, Trunkline commenced a 120-day transportation service for Consumers under § 284.223(a), as reported in Docket No. ST89–3975–000.

Trunkline further states that no facilities need be constructed to implement the service. Trunkline states that the agreement provides for a primary term of one month from the initial date of service, but that the

agreement would continue month-to-month thereafter until terminated by either party upon at least thirty days' prior notice to the other. Trunkline proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. United Gas Pipe Line Company

[Docket No. CP89–1734–000]

July 12, 1989.

Take notice that on July 6, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1734–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing (Texaco), a marketer, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 25, 1988, as amended on April 17, 1989, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Texaco. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced May 3, 1989, as reported in Docket No. ST89–3898–000 (filed June 15, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Company

[Docket No. CP89–1736–000]

July 12, 1989.

Take notice that on July 6, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1736–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Hadson Gas Systems, Inc. (Hadson), a shipper of natural gas, under El Paso's blanket certificate issued in Docket No. CP88–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 105,500 MMBtu equivalent of natural gas, 31,650 MMBtu equivalent on an average day, and 11,552,250 MMBtu equivalent on an annual basis for Hadson. It is stated that El Paso would receive the gas for Hadson's account at any receipt point on El Paso's system and would deliver equivalent volumes at delivery points on El Paso's system in Oklahoma, Texas, New Mexico and Colorado. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced May 26, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89–3884.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Granite State Gas Transmission, Inc.

[Docket No. CP89–1755–000]

July 12, 1989.

Take notice that on July 10, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, filed in Docket No. CP89–1755–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new point for deliveries of gas to Bay State Gas Company (Bay State), an existing affiliated distribution customer, under the blanket certificate issued in Docket No. CP82–515–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Granite State states that it would install the new delivery point on its pipeline within the borders of an existing facility located in Haverhill, Massachusetts, known as the Pleasant Street Meter Station, where Tennessee Gas Pipeline Company (Tennessee) currently connects with Granite State's pipeline and where Tennessee also delivers gas to the Essex County Gas Company (Essex County). Granite State further states that the new connection would be located immediately downstream of the point where the Tennessee pipeline now connects to Granite State's pipeline. It is estimated that approximately 10,000 Mcf per day for 150 days each year, at maximum use, would be delivered to Bay State at the proposed delivery point. It is stated that the estimated cost of the new delivery point is $350,000, and that Granite State would be reimbursed for the cost by Bay State.

Granite State states that the new delivery point, through displacement, would enable it to deliver gas to Bay State in cooperation with Tennessee at other delivery points in Massachusetts where Tennessee now delivers gas for Granite State's account to Bay State. It is further stated that deliveries to Bay State through the new delivery point would enable Granite State to increase off-season purchases from Shell.

Granite State states that the total volumes which it is authorized to deliver to Bay State after approval of this request would not exceed the volumes authorized prior to its approval. It is also stated that construction of the new delivery point is not prohibited by Granite State's existing tariff under which sales are made to Bay State. Granite State alleges that deliveries through the new delivery point would be made without detriment or disadvantage to Granite State's other customer requirements and, furthermore, no abandonment of service would result from approval of this request.

Comment date: July 28, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

18. ANR Pipeline Company

[Docket No. CP89–1763–000]

July 12, 1989.

Take notice that on July 11, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1763–000 an application pursuant to §§ 157–205 and 284.223 (18 CFR 157.205 and 284.223 18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service for Texaco Gas Marketing, Inc. (Texaco), a marketer of gas, pursuant to ANR's blanket transportation certificate issued July 25, 1988, in Docket No. CP88–532–000. All as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it will receive the gas at various supply sources in the offshore areas of Louisiana and Texas and deliver the gas for the account of Texaco at a delivery point in West Cameron Block 167, offshore Louisiana.

ANR proposes to transport up to 1,000 dt of gas on a peak and average day and approximately 36,500.00 dt of gas annually. ANR states the transportation commenced on May 1, 1989, pursuant to the 120-day automatic authorization under § 284.223 of the Commission's Regulations under the terms of a transportation agreement dated November 16, 1988. ANR notified the Commission of the transportation service in Docket No. ST89–4128–000 on July 11, 1989.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Southern Natural Gas Company

[Docket No. CP89–1610–000]

July 13, 1989.

Take notice that on June 13, 1989, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35303–3563, filed in Docket No. CP89–1610–000 a request, as supplemented June 27, 1989, purusant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, install and operate pipeline facilities in Vermilion, Iberia, and St. Martin Parishes, Louisiana under the authorization issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposed to construct, install, and operate the proposed pipeline facilities in order to provide its markets direct access to additional gas reserves located in the offshore Louisiana area beyond the reach of its existing gas supply facilities. The proposed pipeline would connect directly to Southern's existing pipeline system, both the Sea Robin Pipeline Company (Sea Robin) Compressor Station and Sabine Pipe Line Company's (Sabine) Henry Hub header located at the outlet of Texaco Inc.'s (Texaco) Henry gas processing plant (Sabine Henry Hub), in Erath, Vermilion Parish, Louisiana. Specifically, Southern proposes to construct, install, and operate: (i) A meter station, consisting of two 12-inch meter runs along with flow control valves and other appurtenances, located at the Sea Robin Compressor Station; (ii) a meter station, located at the south end of Southern's existing 16-inch Erath Bypass Line, adjacent to Sabine's Henry Hub header, consisting of two 12–inch meter runs along the flow control valves and other appurtenances; and (ii) approximately 28.6 miles of 20-inch pipeline extending from the Sea Robin Compressor Station and the north end of Southern's existing 16-inch Erath Bypass Line to a point of interconnection with Southern's pipeline system at Mile Post 2.5 on its South Section 28 pipeline in St. Martin Parish, Louisiana. Southern alleges that the proposed extension of the South Section 28 Line would result in that pipeline having a maximum design capacity of 225,000 Mcf per day. It is anticipated that the new pipeline would initially transport approximately 127,000 Mcf per day.

Southern states that the construction and operation of the proposed meter station and pipeline would have no significant adverse impact on the quality of the human environment. The total cost for all of the proposed pipeline and metering facilities is estimated to be $12,677,834. It is alleged that although the exact plan of financing has not been determined, Southern expects that the cost of constructing and installing the proposed facilities would be financed initially by short-term financing and/or cash from current operations, and ultimately from permanent financing.

It is alleged that the proposed facilities are an eligible facility as defined in § 57.202(b)(2)(i) of the Commission's regulations in that they would enable Southern to attach gas supplies directly to its pipeline system for both its general system supply and in the performance of transportation service pursuant to its blanket certificate issued pursuant to § 284.221 of the Commission's regulations. It is further alleged that the specific purpose of the proposed facilities is to provide Southern's markets with direct access to additional gas reserves located in the offshore Louisiana area beyond the reach of its existing gas supply facilities. It is stated that the proposed facilities would allow Southern to extend its South Section 28 Line and establish a direct connection with the Sea Robin Compressor Station and the Sabine Henry Hub, so that its customers would have access to available gas supplies without the incurrence of third party transportation charges. It is averred that pursuant to Southern's transportation tariff, the Sea Robin Compressor Station and the Sabine Henry Hub interconnection would become new receipt points under all existing and future transportation service agreements.

Southern states that during 1988, the Sea Robin pipeline system had an average daily throughput of 512,300 Mcf per day. Of these volumes, 503,434 Mcf per day represent volumes transported through Sea Robin's system. In addition to the gas available from Sea Robin, Southern alleges that its proposal to connect to the Sabine Henry Hub, would provide access to large volumes of gas which pass through both the Sabine Henry Hub and the Texaco Henry Plant daily. The Texaco Henry Plant has a capacity of 803,000 Mcf per day, with an average daily throughput in 1987 of 274,000 Mcf per day. Reported volumes through the Sabine Henry Hub are approximately 750,000 Mcf per day, consisting of approximately 350,000 Mcf per day flowing from the Texaco Henry Plant and approximately 400,000 Mcf per day originating from Sabine's mainline sources and the pipelines connected to the Sabine Herny Hub, including 100,000 Mcf from Sea Robin.

Southern does not propose to charge an incremental rate to perform services through the facilities, but proposes to charge its currently effective rates under the existing tariff. It is further indicated that transportation through the proposed facilities pursuant to Southern's existing tariff represents the most cost effective alternative Southern has been able to devise for providing its customers with direct access to the gas supplies available from the Sea Robin system and the Sabine Henry Hub.

Southern avers that transportation through the proposed facilities is especially significant with respect to the gas supplies available on the Sea Robin system because Southern's pipeline system traditionally has been the market for one-half of Sea Robin's reserves. It is alleged that Sea Robin's system is used primarily for transportation but because it would require incurring third party transportation charges to move spot market gas supplies from the Sea Robin system to Southern system, Southern's customers have been economically foreclosed from this traditional source of supply for Southern's markets. It is alleged that the proposed facilities would correct the inequitable situation and once again establish the Sea Robin system as a significant source for Southern's system requirements.

Comment date: August 28, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Southern Natural Gas Company

[Docket No. CP89–1721–000]

July 13, 1989.

Take notice that on June 30, 1989, Southern Natural Gas Company ("Southern"), 1900 Fifth Avenue North, P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP89–1721–000 an application pursuant to sections 4 and 7 of the Natural Gas Act for a certificate of Public Convenience and

Necessity authorizing Southern to restructure its jurisdictional sales service by instituting effective October 1, 1989, its Supply Reservation Fee ("SURF") Program under which customers can elect gas purchase options that incorporate a gas inventory charge and commodity rates based upon market prices. Southern also requests abandonment authorization in accordance with the provisions of the proposed program and other pregranted authorization as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the proposed program, which will be applicable to all Southern's jurisdictional firm sales customers, accords customers certain rights to convert the Contract Demand or Maximum Delivery Obligation in their current service agreements to Firm Transportation Demand, and each customer is to submit on or before September 1, 1989 such customer's designation of the amount it elects to convert. Also, Southern states that under the proposed program customers have certain rights to convert additional amounts of Contract Demand or Maximum Delivery Obligation to Firm Transportation Demand. Southern seeks pregranted abandonment of its sales obligations with respect to the initial and the subsequent reduction in each customer's Contract Demand and Maximum Delivery Obligation.

Southern states that under the proposed program customers are to make monthly purchase nominations. Southern seeks abandonment of its obligation to offer for sale except on a best efforts basis volumes of gas in excess of 105% of any customer's monthly purchase nominations. Southern states that under the proposed program certain fees can apply if a customer purchases less than 85% of its monthly purchase nomination.

Southern states that under the proposed program, customers are to elect among various pricing options, some of which have commondity rates based upon a spot market price index and provide for the possibility of fixed price agreements between Southern and the customer. Southern states that there is a Supply Reservation Fee that applies under two of the pricing options and Southern has requested authority to put into effect without suspension and not subject to refund certain automatic adjustments in the fee and changes in the terms and conditions applicable to its computation, the latter subject to certain rights of the customers affected to convert any portion or all of their Contract Demand or Maximum Delivery Obligation to Firm Transportation Demand and/or to file revised purchase nominations.

Southern states that the program also contains certain provisions and options for customers with respect to overcollection and undercollections of costs under the proposed program.

Southern also requests authorization to terminate its PGA and to bill its customers directly for the balance in its PGA, FERC Account No. 191, on the basis of their purchases during the twelve-month period ended March 1989.

Southern states that other terms, conditions and rates apply as more fully set out in the application and the proposed tariff sheets attached thereto, all of which are on file with the Commission and open to public inspection.

Southern seeks expedited treatment of its application.

Comment date: August 3, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 dsays after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16981 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-010, RP86-11-007, RP85-11-024 (Phase II), RP89-110-004, RP98-111-004]

KN Energy, Inc.; Proposed Changes in FERC Gas Tariff

July 14, 1989.

Take notice that KN Energy, Inc. ("KN") on June 27, 1989 tendered for filing two revised tariff sheets. The proposed effective date for these tariff sheets is April 1, 1989.

KN states that its May 17, 1989 compliance filing inadvertently inserted certain language incorrectly and also created an ambiguity. This filing according to KN, corrects the insertion and removes the ambiguity.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 21, 1989. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16982 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-49-007]

National Fuel Gas Supply Corp.; Filing

July 14, 1989.

Take notice that on July 6, 1989, National Fuel Gas Supply Corporation (National) filed Second Substitute Eighteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 1, 1989.

National states that Substitute Eighteenth Revised Sheet No. 4, filed on June 30, 1989, inadvertently reflected erroneous rates and charges under Rate Schedules T-1 and GSS. National requests that the corrected Second Substitute Eighteenth Revised Sheet No. 4 be substituted.

National states that copies of this filing have been mailed to all intervenors in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such protests should be filed on or before July 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16983 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-55-044]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 14, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) Tendered for filing on July 6, 1989 certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. Which tariff sheets are included in Appendix A attached to the filing. The proposed effective dates of the revised tariff sheets are indicated in Appendix A.

Transco states that the purpose of this filing is to comply with Ordering paragraph (B) of the Commission's order issued June 8, 1989 in Docket No. RP82-55-041. Such order accepted Transco's compliance filing of January 23, 1989 in the referenced docket and requires Transco to file tariff sheets reflecting for periods beyond April 30, 1988, the Commission's directives in the Opinion No. 260 series of orders and the cost of service approved in Docket No. RP87-7-030. Ordering Paragraph (B) of the June 8 Order further directs Transco to utilize the throughput mix reflected in the January 23, 1989 compliance filing, or in the alternative, the throughput mix reflected in Transco's comprehensive settlement filed on April 3, 1989 in Docket Nos. RP88-68-000, *et al.* In the instant filing Transco has reflected the throughput mix contained in the April 3 Settlement.

Transco States that copies of the instant filing are being mailed to customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-16984 Filed 7-19-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44533; FRL-3619-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,3 dichloropropanol (CAS No. 96-23-1), dihydrosafrole (CAS No. 94-58-6), dibromomethane (CAS No. 74-95-3), ortho-cresol (CAS No. 95-48-7) and para-cresol (CAS No. 106-44-5) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions.

Test data for 1,3 Dichloropropanol was submitted by the Dow Chemical Company pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on July 5, 1989. The submission describes a soil adsorption study of dichloropropanol. Soil adsorption isotherm testing is required by this test rule.

Test data for dihydrosafrole was submitted by the Ethyl Corporation pursuant to a test rule at 40 CFR 799.5055(c). It was received by EPA on July 5, 1989. The submission describes a determination of the hydrolysis potential of dihydrosafrole as a function of pH at 25°C. Hydrolysis testing is required by this test rule.

Test data for dibromomethane was submitted by the Ethyl Corporation pursuant to a test rule at 40 CFR 799.5055(c). It was received by EPA on July 5, 1989. The submission describes a determination of the hydrolysis potential of dibromomethane as a function of pH at 25°C. Hydrolysis testing is required by this test rule.

Test data for ortho-cresol and para-cresol were submitted by Chemical

Manufacturers Association pursuant to a test rule at 40 CFR 299.1250. These were received by EPA on July 6, 1989. The submissions describe: (1) A mutagencity test on ortho-cresol; in the vitro transformation of BALB/C–3T3 cells assay in the presence of a rat liver cell activation system, (2) dominant lethal assay in mice with ortho-cresol and (3) dominant lethal assay in mice with para-cresol. Mutagenicity testing is required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for these TSCA section 4(d) receipt of data notices (docket number OPTS–44533). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 11, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89–17032 Filed 7–19–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3618–7]

Proposed General NPDES Permit for Private Domestic Discharges in the State of Louisiana; Fact Sheet

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Proposed General NPDES Permit.

SUMMARY: The Regional Administrator of Region 6 has tentatively decided to prepare a draft general NPDES permit for certain dischargers who treat sanitary wastes. When issued, this general NPDES permit will establish effluent limitations, standards, prohibitions, and other conditions on these discharges. The facilities covered by this permit include single family residences, multi-family residences, small trailer parks, restaurants, hospitals, shopping centers, motels and office buildings located within the State of Louisiana.

This draft general permit is based on the administrative record available for public review in Region 6 of the Environmental Protection Agency (EPA). The fact sheet sets forth the principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A copy of the draft permit is attached.

DATE: Interested persons may submit comments of the draft general permit and administrative record to the address below no later than August 21, 1989.

ADDRESS: Ms. Ellen Caldwell (6W–PS), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell (6W–PS), Permits Branch (6W–P), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone: (214) 655–7190.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Eliminating System (NPDES) Permit. In the past, such permits have generally been issued to individual dischargers. However, EPA's regulations authorize the issuance of general permits to categories of dischargers (40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located in the same geographic area whose discharges warrant similar pollution control measures. The Regional Administrator (with delegation to the Water Management Division Director) is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

As is the case of individual permits, violations of any condition of a general permit constitutes a violation of the Act and subjects the discharger to the penalties specified in section 309 of the Act. Any owner or operator authorized by a final general permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting a NPDES permit application, together with reasons supporting the request, no later than October 18, 1989. New facilities, which qualify, are covered under this general permit unless they apply for an individual permit using the appropriate application.

The Regional Administrator may require any privately owned facility authorized to discharge by a final general permit to apply for and obtain an individual permit. In addition, any interested person may petition the Regional Administrator to take this action. However, an individual permit will not be issued for any point source covered by a general permit unless it can be demonstrated that inclusion under a general permit is clearly inappropriate.

The Regional Administrator may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or
6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

B. Expiration Date

This NPDES general permit shall expire five (5) years from the effective date of the permit or for coverage of a facility under the general permit upon termination of discharge and closure of the facility.

C. Water Quality Based Effluent Limitations

The Louisiana Department of Environmental Quality, Office of Water Resources, has promulgated area wide policies which update the Water Quality Management Plan for all sanitary waste treatment facilities which discharge to U.S. waters in the State of Louisiana.

Minimum levels of effluent quality attainable by secondary treatment are established by 40 CFR 133.102. The State of Louisiana has established a more stringent requirement for all privately owned facilities with a design flow of less than 2,500 gpd (0.0025 MGD), 45 mg/1 for daily maximum for BOD_5 and TSS. Disinfection is required by the State of

Louisiana. The pH limits within the range of 6.0 and 9.0 standard units are based on 40 CFR 133.102(c).

D. Technology Based Effluent Limitations

This permit applies only to facilities with design capacities (flows) of less than 2500 gpd (0.0025 MGD).

E. Monitoring Requirements

All facilities operating under conditions of this general permit are required to monitor each parameter twice per year. However, if the daily maximum limit in any sample is exceeded then the monitoring frequency increases to once per month. This increased frequency shall continue until a sample demonstrates a value less than or equal to the daily maximum.

II. The Nature of Discharge From Privately Owned Sources

The source of wastewater discharges from privately owned treatment plants is sanitary sewage which is amenable to biological treatment. There are no toxic or priority pollutants present.

III. Conditions In the General Permit

A. Geographic Areas and Covered Facilities

The draft permit, when issued, will authorize discharges from facilities at various locations within the State of Louisiana, to various storm sewers, tributaries, stream segments and rivers basins. The permit will be applicable only to privately owned facilities which have direct discharges to "waters of the United States" as defined in 40 CFR 122.2 and are therefore subject to the requirements of sections 301 and 402 of the Act.

B. Privately Owned Discharges

The facilities covered by this permit are discharges of sanitary wastes. These facilities are not publicly owned treatement works (POTW) as defined under 40 CFR Part 122.2. Within the State of Louisiana there is a significant number of privately owned dischargers which are covered by the Secondary Treatment Regulations. The nature of effluents from these facilities involves the same types of operations, discharge of the same type of wastewater, and the same effluent limitations and monitoring requirements. Therefore, these facilities are more appropriately controlled by a general permit. In addition, the general permit will eliminate or reduce, for the Agency, the time consuming process of drafting and issuing individual permits and similarly eliminate, for the dischargers, the regulatory burden of applying for and obtaining individual permits.

IV. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the State in which the discharge will originate, grants or waives certification to ensure compliance with appropriate requirements of the Act and State law, including water quality standards. Region VI has requested the State of Louisiana to certify this draft general permit.

B. Water Quality Standards

Section 301(b)(1)(C) of the Act requires that NPDES permits contain limitations necessary to meet water quality standards established pursuant to State law or regulation or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. The maximum 30-day average load allowed by this general permit for either BOD or TSS is 0.6 lb/day. Therefore, no water quality standard violations are expected due to the de minimus nature of discharges.

C. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

D. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

E. Economic Impact (Executive Order 12291)

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order.

F. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

G. The Regulatory Flexibility Act

After reivew of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 USC 605(b), that this general NPDES permit will have a positive benefit on a substantial number of small entities. Moreover, the permits reduce a significant administrative burden on regulated sources.

Dated: July 5, 1989.

Joseph D. Winkle,

Acting Regional Administrator, Region VI.

Wastewater Discharge Permit

General Permit Number LAG550200

Pursuant to the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251, et. seq; the "Act"), and Federal Regulations promulgated under the authority of the Act, a National Pollutant Discharge Elimination System (NPDES) General Permit is issued authorizing privately owned facilities, in the State of Louisiana, that meet the requirements of Part II. B herein and who discharge to waters of the United States, sanitary wastewater totaling less than 2,500 gallons per day, in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I and II herein. Privately owned facilities covered include, but are not limited to single family residences, multi-family residences, small trailer parks, restaurants, hospitals, shopping centers, motels and office buildings.

This permit shall become effective on

This permit and the authorization to discharge shall expire at midnight on

Signed this day of

Myron O. Knudson,

Director, Water Management Division (6W).

Part I

Section A. Effluent Limitations

During the period beginning on the effective date of this general permit and lasting through the date of expiration, all privately owned sanitary wastewater dischargers with facilities having a design flow of less than 2,500 gallons per day are covered under this general permit and are authorized to discharge sanitary wastewater from their treatment plant in accordance with the following limitations and monitoring requirements.

Effluent characteristics	Discharge limits		Monitoring requirements	
	30-day avg.	Daily max.	Measurement frequency	Sample type
Flow-gpd	Monitor	2499	Two/year [1]	Estimate
BOD5	30 mg/l	45 mg/l	Two/year [1]	Grab
TSS [3]	30 mg/l	45 mg/l	Two/year [1]	Grab
Oil and Grease [2]	10 mg/l	15 mg/l	Two/year [1]	Grab
Fecal Coliform Colonies/100 ml	200/100 ml	400/100 ml	Two/year [1]	Grab

The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored twice/year [1] by grab sample.
[1] If the value of this effluent characteristic exceeds the daily maximum limit in any sample, then the monitoring frequency shall increase to one/month. This increased frequency shall continue until a sample demonstrates a value less than or equal to the daily maximum limitation.
[2] Required only for commercial food service operations.
[3] Facilities using stabilization ponds as the primary treatment process are limited to 90 mg/l for the 30-day avg. and 135 mg/l for the daily maximum TSS.

Section B. Monitoring Requirements

All sampling and testing shall be done in accordance with 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act."

Samples shall be taken at the discharge from the final treatment unit and prior to mixing with the receiving waters. Provisions must be made during the installation of the treatment unit for the taking of a proper sample. This permit has a minimum requirement that samples must be taken and analyzed only twice a year. However, the permittee shall at all times operate and maintain the facilities used to achieve compliance with the conditions of this permit, including additional sampling and testing as necessary to assure that the permit limitations are not exceeded at any time.

Records of monitoring and testing information shall include:

a. The date, exact place and time for sampling and measuring;

b. The individual who performed the sampling and measurements;

c. The dates and times analyses were begun;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used;

f. The results of such analyses;

g. The results of all quality control procedures; and

h. The instantaneous flow estimates.

All monitoring records must be retained for a period of at least three (3) years from the date of the sample measurement. Monitoring results must be recorded on a discharge monitoring report (DMR) form (EPA No. 3320–1 or an approved substitute). The permittee shall make available to this office and the Louisiana Department of Environmental Quality, upon request, copies of all monitoring data required by this permit. Upon request, the permittee shall submit signed and certified DMRs and any other reports required by this office to the Regional Administrator of the Environmental Protection Agency and the Louisiana Office of Water Resources at the following addresses:

Chief, Enforcement Branch (6W–E), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Office of Water Resources, Department of Environmental Quality, P.O. Box 44091, Capital Station, Baton Rouge, Louisiana 70804–4091.

Section C. Other Discharge Limitations

There shall be no discharge of floating solids or visible foam, other than trace amounts.

Part II

Other Requirements

The permittee must comply with all applicable provisions of the Act and the Regulations. The following definitions and additional requirements are in accordance with the Act and the Regulations.

Section A. Definitions

"Act" means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

"Biochemical Oxygen Demand (BOD5)" means the amount of oxygen required by bacteria during the decay of organic or nitrogenous material in sanitary sewage.

"Total Suspended Solids (TSS)" means the amount of solid material suspended in water, commonly expressed as a concentration, in terms of mg/l.

"Fecal Coliform" means a gram negative, non-spore forming, rod shaped bacteria found in the intestinal tract of warm-blooded animals.

"Facility" means a pollution source, or any public or private property or site and all contiguous land and structures, other appurtenances and improvements, where any activity is conducted which discharges or may result in the discharge of pollutants into waters of the U.S.

"mg/l" means milligrams per liter; it is essentially equivalent to parts per million in dilute aqueous solutions.

"Sanitary sewage" means treated or untreated wastewater which contains human metabolic and domestic wastes.

"Standard Methods" means Standard Methods for the Examination of Water and Wastewater, American Public Health Association, Washington, DC.

"30-day average" other than fecal coliform bacteria, is the arithmetic mean of the daily values for all effluent samples collected during a calendar month, calculated as the sum of all the daily dischareges measured during a calendar month divided by the number of daily discharges measured during that month. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected during a calendar month.

"Daily Maximum" means the highest allowable daily discharge during the calendar month.

"Grab Sample" means an individual sample collected in less than 15 minutes.

"National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment under sections 307, 318, 402, and 405 of the Act.

Section B. Applicability

All privately owned facilities operating a source or conducting an activity that results in a sanitary sewage discharge as described below are covered under this general permit and will become permittees authorized to discharge upon the effective date of this permit. Any discharger covered by an individual permit may request that the individual permit be canceled if the permitted source or activity is eligible for coverage by this general permit. As long as the source or activity is covered by an individual permit, as well as this general permit, the conditions of the individual permit will govern, until such time as it is canceled or expires.

Facilities covered by this general permit are those discharging only sanitary sewage as defined herein and

discharge less than 2500 gallons of wastewater per day. Facilities covered include, but are not limited to single family residences, multi-family residences, small trailer parks, restaurants, hospitals, shopping centers and office buildings.

This General Permit shall not apply to:

1. Facilities having multiple discharges, not all of which are sanitary sewage, even though the total sanitary discharge is less than 2500 gallons per day. Contaminated or possibly contaminated stormwater runoff is one such non-sanitary discharge; or

2. Facilities built in conflict with the State of Louisiana Sanitary Code.

The Director reserves the right to require any discharger to apply for an individual permit and to operate the facility in accordance with that indiviual permit.

Section C. Facility Changes

The authorization to discharge in accordance with this general permit is terminated upon the increase in the average discharge rate to 2500 gallons per day or greater. Prior to such an increase in the discharge rate from a treatment unit covered by this general permit, the permittee must submit a modified wastewater discharge permit application (Form 1 General Information and Form 2E—Facilities Which Do Not Discharge Process Wastewater) to this office and receive from this office an individual permit with authorization to discharge at that increased rate.

Section D. Termination of Authorization to Discharge

This office reserves the right to revoke the authorization to discharge in accordance with this general permit as it applies and/or require such person to apply for and obtain an individual permit if:

1. The covered source or activity is a significant contributor to pollution or creates other environmental problems;

2. The permittee is not in compliance with the terms or conditions of this general permit; or

3. Conditions or standards have changed so that the source or activity no longer qualifies for this general permit.

Section E. Schedule of Compliance

Compliance by the permittee with the effluent limitations and monitoring requirements specified for discharges shall be achieved upon the effective date of this general permit.

Section F. Prohibition of Bypass

Bypass is prohibited and the director may take enforcement action against a permittee for bypass.

Section G. Inspection and Entry

The permittee shall allow the Director or an authorized representative upon the presentation of credentials and other documents as may be required by the law to:

1. Enter upon the permittees premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times for the purpose or assuring permit compliance, or as otherwise authorized by the Act any substances, or parameters at any location.

Section H. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

Section I. State Laws

Nothing in this permit shall be construed to preclude the institution from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

Section J. Signatory Requirements

All records, reports and other information required by this permit, or requested by the Director shall be signed by the owner or his/her duly authorized representative.

[FR Doc. 89-16953 Filed 7-19-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirements

July 13, 1989.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0010
Title: Ownership Report
Form No.: FCC 323

The approval on FCC 323 has been extended through 6/30/92. The March 1988 edition with the previous expiration date of 4/30/89 will remain in use until updated forms are availble.

OMB No.: 3060-022
Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States
Form No.: FCC 610-A

The approval on FCC 610-A has been extended through 6/30/92. The August 1986 edition with the previous expiration date of 6/30/89 will remain in use until updated forms are avilable.

OMB No.: 3060-0027
Title: Application for Construction Permit for Commercial Broadcast Station
Form No.: FCC 301

A revised application form FCC 301 has been approved for use through 2/28/92. The current edition of the form is dated June 1989. The previous edition dated August 1987 with the previous OMB expiration date of 2/28/89 will continue to be accepted until August 31, 1989.

OMB No.: 3060-0034
Title: Application for Construction Permit for Noncommercial Educational Broadcast Station
Form No.: FCC 340

A revised application for FCC 340 has been approved for use through 4/30/92. The current edition of the form is dated May 1989. The previous edition dated May 1985 with the previous expiration date of 9/30/87 will continue to be accepted until August 31, 1989.

OMB No.: 3060-0355
Title: Rate of Return Report
Form No.: FCC 492

The approval on FCC 492 has been extended through 4/30/92. The January 1987 edition with the previous expiration date of 4/30/89 will remain in use until updated forms are available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-17015 Filed 7-19-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal

Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003813–012
Title: Hawaii Terminal Agreement.
Parties:
Department of Transportation of the State of Hawaii (Port)
Matson Terminals, Inc. (MTI).

Synopsis: The Agreement amends the basic agreement providing for the Port's lease to MTI of certain terminal facilities at Honolulu, Hawaii. The purpose of the amendment is to (1) enlarge the area under lease by the addition of Easement K and L; (2) increase the annual ground rental proportionately; (3) substitute revised exhibits; and (4) restate Section 3.3(1)(i) to add the purpose, area and ground rental of various parcels and easements.

Agreement No.: 224–200060–008
Title: Port of New Orleans Terminal Agreement
Parties:
Port of New Orleans
Coastal Cargo Company

Synopsis: The Agreement provides for the cancellation of ten sections of the Galvez Street Wharf leased under the basic agreement and reduces the rent proportionally. The action is authorized under an option contained in section 9(a) of the basic lease agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 13, 1989.

[FR Doc. 89–16945 Filed 7–19–89; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirement for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 206–011150–002
Title: Atlantic Westbound Stabilization Agreement.
Parties:
North Europe-U.S. Atlantic Conference
North Europe-U.S. Gulf Freight Association
South Europe/U.S.A. Freight Conference

Synopsis: The proposed modification would delete North Europe-U.S. Atlantic Conference and North Europe-U.S. Gulf Freight Association as parties to the Agreement. It would also add North Europe-USA Rate Agreement as a party to the Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89–16946 Filed 7–19–89; 8:45 am]

BILLING CODE 6730–01–M

Security For the Protection of the Public Financial Responsibility to Meet Liability Incurred For Death or Injury To Passengers Or Other Persons on Voyages; Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Mitsui O.S.K. Lines (Passenger) Ltd., and Mitsui O.S.K. Lines Ltd., c/o Mitsui O.S.K. Lines (America) Inc., One World Trade Center, Suite 2211, New York, New York 10048.
Vessel: Fuji Maru.

Date: July 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–16947 Filed 7–19–89; 8:45 am]

BILLING CODE 6730–01–M

Security For the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Mitsui O.S.K. Lines (Passenger) Ltd. and Mitsui O.S.K. Lines Ltd., c/o Mitsui O.S.K. Lines (America) Inc., One World Trade Center, Suite 2211, New York, New York 10048.
Vessel: Fuji Maru.

Date: July 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–16948 Filed 7–19–89; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 89–15]

Martexport, Inc. v. Jugolinija Line, et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Martexport, Inc. ("Complaint") against Jugolinija Line, Brian Lux and John Soroko, Cross Ocean Shipping Co., Inc., Chew International Group, A.E. Chew & Co., Inc., Ralph Chew, Gillman Products International, Murtaza Fazal, Kevin Egan, Canio DiMilia and Ibrahim Jaffer ("Respondents") was served July 13, 1989. Complainants allege that Respondents engaged in violations of sections 10(a)(1) and 10(b) (1), (3), (4), (5), (6), (10), (11), and (12), of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1) and 1709(b) (1), (3), (4), (5), (6), (10), (11), and (12), by engaging in undercharges to the Chew International Group ("Chew") of $570,404 on 539 shipments of non-perishable foodstuffs and grocery items. Complainant alleges that secret untariffed rates, unavailable to Complainant, created a sales advantage for Chew in the Middle East, causing Complainant to lose sales from 1984 through the present time, and pay higher freight rates on cargo shipped by Complainant.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the

Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 13, 1990, and the final decision of the Commission shall be issued by November 13, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 89-16949 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the following ocean freight forwarder license revocation has been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/Address
2561	Fontana International, Inc., P.O. Box 330136, 2335 NW., 107th Street, Miami, FL 33172.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 89-17019 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2804
Name: Pacific Rim Shipping, Inc.
Address: Seattle Tower, #1205, Seattle, WA 98111
Date Revoked: June 21, 1989
Reason: Failed to maintain a valid surety bond

License Number: 1208
Name: Hamilton Brothers, Inc.
Address: P.O. Box 1500, Tampa, FL 33601
Date Revoked: June 29, 1989
Reason: Failed to maintain a valid surety bond

License Number: 2676
Name: Elba De Melo dba Texas Cargo
Address: 11261 Richmond Bldg. 106
Date Revoked: June 30, 1989
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Deputy Director, Bureau of Domestic Regulation.

[FR Doc. 89-17020 Filed 7-19-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citrus Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 9, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citrus Financial Services Corporation, Vero Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citrus Bank, National Association, Vero Beach, Florida, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First National Security Company, DeQueen, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank of DeQueen, DeQueen, Arkansas; Citizens National Bank of Nashville, Nashville, Arkansas; First National Bank of Howard County, Dierks, Arkansas; and Bank of Ashdown, N.A., Ashdown, Arkansas. These banks only engage in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank.

2. Union Planters Corporation, Memphis, Tennessee, and its subsidiary, United Southern Corporation, Clarksdale, Mississippi; to merge with National Commerce Corporation, New Albany, Mississippi, and thereby indirectly acquire First National Bank, New Albany, Mississippi, which only engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank. Also, depositors of the bank may join a club (called "First Flight Club") which offers to its members the option to purchase accidental death group life insurance coverage through Fisi Madison Financial, Nashville, Tennessee.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. Palm Desert Investments, Indian Wells, California; to become a bank holding company by acquiring at least 25 percent of the voting shares of Palm Desert National Bank, Palm Desert, California.

Board of Governors of the Federal Reserve System, July 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16959 Filed 7-19-89; 8:45 am]

BILLING CODE 6210-01-M

Johnson Heritage Bancorp, Ltd.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Johnson Heritage Bancorp, Ltd., Racine, Wisconsin; to engage *de novo* through its subsidiary, Johnson Heritage Trust Company, Racine, Wisconsin, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-16960 Filed 7-19-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Terminology To Incorporate Standards in Solicitations

AGENCY: Information Resources Management Services, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is issuing a notice to provide the opportunity to comment on the proposed terminology to incorporate standards in solicitations for approved and amended Federal Information Processing Standards (FIPS). When FIPS are adopted by the Government, it is necessary for these standards to be implemented into the Federal ADP and Telecommunications Standards Index for use by Departments and Agencies when acquiring information processing equipment and services.

Prior to approval and incorporation of this procurement language into the Federal ADP and Telecommunications Index, it is essential to ensure that consideration is given to the views and concerns of suppliers, the public, State and local governments, and Federal Departments and agencies.

DATE: Comments on the proposed acquisition terminology must be received on or before September 18, 1989.

ADDRESS: Comments should be submitted to the: General Services Administration, IRMS, KMPS, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

1. New Specifications Terminology.

a. FIPS 126, Database Language NDL

Proposed Solicitation Wording:

Acquisition of NDL Database Language

All NDL Database languages offered as a result of the requirements of which this is a part shall conform to the requirements set forth in FIPS 126 and shall implement all of the language elements specified, as well as any additional language features as specified elsewhere in this document [insert reference here].

b. FIPS 127, Database Language SQL

Proposed Solicitation Wording:

Acquisition of SQL Database Language

All SQL Database languages offered as a result of the requirements of which this is a part shall conform to the requirements set forth in FIPS 127 and shall implement all of the language elements specified, as well as any additional language features as specified elsewhere in this document [insert reference here].

c. FIPS 128, Computer Graphics Metafile (CGM)

Proposed Solicitation Wording:

Acquisition of Computer Graphics Metafile (CGM)

All equipment, applications software or services acquired to accept, process, store, transmit, or interchange graphical/pictorial information that is in file format and is required to be recorded, displayed or printed must be in compliance with the requirements set forth in FIPS PUB 128.

d. FIPS 129, Optical Character Recognition (OCR) Dot Matrix Character Sets for OCR-MA

Proposed Solicitation Wording:

Acquisition of Optical Character Recognition (OCR) Dot Matrix Character Sets for OCR-MA

All applicable optical character recognition (OCR) equipment or services resulting from this requirement which utilizes the dot matrix character set must comply with the requirements set forth in FIPS 129.

e. FIPS 130, Intelligent Peripheral Interface

Proposed Solicitation Wording:

Acquisition of Intelligent Peripheral Interface

Unless otherwise excluded as specified in FIPS 130 by reference to FIPS 60-2, FIPS 61-1, FIPS 62, FIPS 63, FIPS 97 or otherwise a waiver is granted, following the waiver procedures specified in the standard, applicable ADP systems and peripheral storage subsystems that may result from this solicitation must conform to FIPS 130. The correct operation of all interfaces whose conformance to FIPS 130 is required may be verified before the acceptance of all applicable ADP peripheral equipment. Arrangements for verification may be made according to procedures specified in FIPS 60-2 or as specified [insert reference here] in this solicitation.

f. FIPS 131, Small Computer Systems Interface

Proposed Solicitation Wording:

Acquisition of Small Computer System Interface

Unless otherwise excluded as specified in FIPS 131 by reference to FIPS 60-2, FIPS 62, FIPS 63 and FIPS 97 or unless a waiver is granted, following the waiver procedures specified in the standard, applicable computer systems and peripheral storage subsystems that may result from this solicitation must conform to FIPS 131. The correct operation of all interfaces whose conformance to FIPS 131 is required may be verified before the acceptance of ADP systems and peripheral subsystems. Arrangements for verification may be made according to procedures specified in FIPS 60-2 or as specified [insert reference here] in this solicitation document.

g. FIPS 143, General Purpose 37-Position and 9-Position Interface

between Data Terminal Equipment and Data Circuit-Terminating Equipment

Proposed Solicitation Wording:

Acquisition of General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment

All general purpose 37-position and 9-position interfaces offered for use with data communication systems as a result of the requirements for which this is a part shall conform to the requirements established in FIPS PUB 143.

h. FIPS 146, GOSIP: Government Open Systems Interconnection Profile

Proposed Solicitation Wording:

Data Communications Protocols

All computer network and communications equipment, systems, and services offered as a result of this requirement must provide the protocols specified in the standards contained in FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP).

i. FIPS 149, General Aspects of Group 4 Facsimile Apparatus

Proposed Solicitation Wording:

Design and Acquisition of Group 4 Facsimile Apparatus

All Group 4 facsimile apparatus designed and offered as a result of this requirement shall comply with FIPS PUB 149.

j. FIPS 150, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus

Proposed Solicitation Wording:

Design and Acquisition of Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus

All Group 4 facsimile apparatus designed and offered as a result of this requirement shall comply with FIPS PUB 150.

k. FIPS 151, POSIX: Portable Operating Systems Interface for Computer Environments

Proposed Solicitation Wording:

Acquisition and Development of Portable Operating Systems

Operating systems environments offered as a result of the requirements of which this is a part shall implement FIPS PUB 151, as well as any additional elements specified elsewhere in this requirements document [insert reference here], and shall require validation in accordance with provisions contained in FIPS PUB 151.

1. FIPS 152, Standard Generalized Markup Language (SGML)

Proposed Solicitation Wording:

Acquisition/Development of SGML Systems

SGML systems offered as a result of the requirements of which this is a part shall conform to the requirements established in FIPS PUB 152 and shall implement all of the language elements of SGML, as well as any additional language features as specified elsewhere in this document [insert reference here], and shall require validation in accordance with the provisions of FIPS PUB 152.

m. FIPS 153, Programmer's Hierarchical Interactive Graphics Systems (PHIGS)

Proposed Solicitation Wording:

Acquisition of Programmer's Heirarchical Interactive Graphics System (PHIGS)

Programmer's Heirarchical Interactive Graphics Systems (PHIGS) offered as a result of the requirements of which this is a part shall conform to the requirements established in FIPS PUB 153 and shall implement all of the functions contained in Part 1 thereof. PHIGS offered must also implement all of the programming language binds contained in FIPS PUB 153, Part 2, except those explicitly excluded as specified elsewhere in this document [insert reference here], as well as any additional programming language bindings specified elsewhere in this document [insert reference here].

n. FIPS 154, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment

Proposed Solicitation Wording:

Acquisition of High Speed 25-Position Interface for Data

Terminal Equipment and Data Circuit-Terminating Equipment Telecommunications systems offered as a result of this requirement which employ high speed (20,000 to 2,000,000 bits per second) interchange between DTEs and DCEs shall conform to the electrical, mechanical and procedural characteristics established for interfaces in FIPS PUB 154.

o. FIPS 155, Data Communications Systems and Services User-Oriented Performance Measurement Methods.

Proposed Solicitation Wording:

Data Communications Performance Testing

Test measurements on data communications systems and services offered as a result of this requirement shall be conducted in accordance with FIPS PUB 155 to determine compliance with the user oriented performance specification contained in FIPS PUB 144.

2. Amended Specification Terminology:

a. ADP and Telecommunications Standard Index, page 69, implementation of FIPS 68–1, Minimal BASIC, change all references from FIPS 68–1 to FIPS 68–2, and change title from Minimal BASIC, to BASIC.

b. Change Solicitation Wording to read:

Acquisition of BASIC Language Compilers

BASIC compilers offered as a result of the requirements of which this is a part shall implement BASIC (FIPS 68–2), as well as any additional language elements as specified elsewhere in this requirements document [insert reference here].

c. Note: the current solicitation language for validation of BASIC compilers contained in the body of the Index, pages 69–70, have not been changed and remain in effect.

Dated: July 11, 1989.

Francis A McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 89–17044 Filed 7–19–89; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting.

Name: National Committee on Vital and Health Statistics Subcommittee on Long-Term Care Statistics.

Time and Date: 10:30 am–5:00 pm—August 15, 1989.

Place: Hubert H. Humphrey Building, Room 337A–339A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: To be briefed on the status of mental illness screening of nursing home patients and to consider a possible information system, resulting from the HCFA Uniform Data Set for Nursing Home Dissident Assessment.

Contact Person for More Information: Substantive program information as well as

summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: July 13, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89–16989 Filed 7–19–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89C–0203]

Bausch & Lomb, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bausch & Lomb, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402–403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 9C0215) has been filed by Bausch & Lomb, Inc., 1400 North Goodman, Rochester, NY 14692–0450, proposing that 21 CFR Part 73 of the color additive regulations be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenylamino] anthraquinone to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 10, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–16951 Filed 7–19–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89M–0211]

Technomed International; Premarket Approval of the Technomed SONOLITH 2000 Lithotriptor

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Technomed International, Danvers, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Technomed SONOLITH 2000 Lithotriptor. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 23, 1989, of the approval of the application.

DATE: Petitions for administrative review by August 21, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Gatling, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–7750.

SUPPLEMENTARY INFORMATION: On June 22, 1988, Technomed International, Danvers, MA 01923, submitted to CDRH an application for premarket approval of the Technomed SONOLITH 2000 Lithotriptor. The device is an extracorporeal shock wave lithotriptor for use in the fragmentation of kidney stones.

On December 6, 1988, the Gastroenterology-Urology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On June 23, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert Gatling (HFZ–420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 21, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 13, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–16952 Filed 7–19–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. The HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revision; *Title of Information Collection:* Hospital Survey Report Form; *Form Number:* HCFA–1537; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,539; *Average Hours per Response:* 3.25; *Total Estimated Burden Hours:* 5,002.

2. *Type of Request:* Revision; *Title of Information Collection:* Medicare/Medicaid Hospital Swing-bed Survey Report Forms; *Form Number:* HCFA–1537C; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 375.

3. *Type of Request:* Extension; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form Number:* HCFA–1514; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,984; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 496.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicare Renal Dialysis Facility Cost Report; *Form Number:* HCFA–265; *Frequency:* Annually; *Respondents:* Business/other for profit and small businesses/organizations; *Estimated Number of Responses:* 1,097; *Average Hours per Response:* 196; *Total Estimated Burden Hours:* 215,012.

5. *Type of Request:* Extension; *Title of Information Collection:* Outpatient Physical Therapy and/or Speech Pathology Services Request for Certification and Survey Report Form; *Form Number:* HCFA–1856/1893; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 313; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 548.

6. *Type of Request:* Extension; *Title of Information Collection:* Histocompatibility Testing Laboratories Survey Report Form; *Form Number:* HCFA–445; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 200; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 200.

7. *Type of Request:* Extension; *Title of Information Collection:* Request for Certification as a Supplier and the Portable X-ray Survey Report Form; *Form Number:* HCFA–1880/1882; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 160; *Average Hours per Response:* 1.75; *Total Estimated Burden Hours:* 280.

Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–16975 Filed 7–19–89; 8:45 am]

BILLING CODE 4120–03–M

Privacy Act of 1974; Matching Program

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of a Matching Program—Beneficiary State File (BEST) and Medicaid master files maintained by State agencies.

SUMMARY: The Department of Health and Human Services in providing public notice that HCFA agrees to disclose information on Medicare eligible individuals to State agencies.

The matching report set forth below is in compliance with the Computer Matching and Privacy Protection Act of 1988 (Pub. L. No. 100–503).

DATE: The match will begin August 21, 1989, and shall remain in effect for a period not to exceed 18 months unless three months prior to the actual expiration date, the Data Integrity Board of the Department of Health and Human Services finds that the program will be conducted without change and each party certifies that the program has been conducted in compliance with the Matching Agreement. Under this finding, the Board may extend the Agreement for one additional year.

ADDRESS: The public should address comments to Richard A. DeMeo, Health Care Financing Administration, Privacy Act Officer, Office of Budget and Administration, Room G–M–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William A. Grant, Division of Entitlement Requirements, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, G–E–7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone Number 301–966–6464.

SUPPLEMENTARY INFORMATION: The Health Insurance (HI) Master Record contains a record of each individual who is, or has been, entitled to health insurance benefits under title XVIII of the Social Security Act (the Act). The BEST file is an extract of the HI Master Record. The BEST file is an alphabetic listing, on magnetic tape, of all Medicare beneficiaries in the State by name, sex, date of birth, address, zip code, buy-in indicator and health insurance claim number (HICN). This extract is the most economical and efficient method of obtaining the claim number of a beneficiary when other identifying information is available. The BEST file has been provided to all States for the express purpose of identifying Medicaid beneficiaries to the State buy-in rolls. In most States, the activity is conducted by the State agency responsible for Medicaid.

The BEST file will enable the State agency to identify individuals eligible for inclusion in a State buy-in account. The BEST file will also enable the State agency to identify those Medicare/Medicaid dually eligible individuals for whom Medicaid has deductible and co-insurance liability. States under a buy-in agreement may enroll individuals for Medicare Part B coverage who are eligible for title XVI (Supplemental Security Income) benefits or eligible under State grants for medical assistance. The State pays the Medicare Part B premiums for these individuals eligible under title XVI.

To query the BEST file, it is necessary for the State to have the individual's name, date of birth, sex and address. With this information, the HICN can be determined. The State is then able to

add the individual to its buy-in account, request the carrier or intermediary to provide a report of any medical expenses paid by Medicare for Medicaid eligibles, or to request payment by Medicare for expenses already paid by Medicaid.

Furnishing the BEST tape to State agencies is essential in enabling the States to determine the correct HICN of individuals eligible for buy-in. The Medicaid master file maintained by the State agency is sequenced according to the individual's social security number of according to the State agency's numbering system. Generally, the State knows who its dually eligible individuals are or should be and needs to obtain the HICN to properly include eligible individuals in its buy-in account.

Use of the BEST file has resulted in the prevention of payments on duplicate claims and fewer referrals by Medicare contractors to Social Security Offices. As a consequence, its use has also been instrumental in the realization of improved service to the public.

Before the BEST file is released to the State, the State must sign an agreement to protect the confidentiality of the information received.

The individual records are retrieved from the BEST file when a Medicaid claim is submitted for payment without a HICN or the HICN is determined to be incorrect. Also, individual records are retrieved for the purpose of screening pre-payment and post-payment Medicaid claims.

Only information that is relevant to the indentification of beneficiaries is contained in the BEST record system.

Set forth below is the information required by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. No. 100–503). A copy of this notice has been provided to the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate and the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget.

Dated: July 13, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Report of Computer Matching Program—Beneficiary State File (BEST)

a. *Authority:* Sections 1814 and 1833 of title XVIII of the Social Security Act (42 U.S.C. Section 1395f and 1395l).

b. *Purpose and Description:* The purpose of this disclosure is to enable the State agency to identify individuals eligible for inclusion in a State buy-in account and to identify Medicare/Medicaid dually eligible individuals for whom Medicaid has deductible and co-insurance liability. Most State agencies require access to the BEST file for improved administration of the Medicaid program. Routine uses of the BEST file are: (a) Obtaining a beneficiary's correct HICN and (b) screening of pre-payment and post-payment Medicaid claims.

The BEST file is an extract of the HI Master Record listing, in alphabetic order, all Medicare beneficiaries in the State by name, sex, date of birth, address, zip code, buy-in indicator and HICN.

c. *Personal Records To Be Matched:* The State agency will match the beneficiary's name, date of birth, sex and address to the BEST file in order to determine the HICN, and to screen pre-payment and post-payment Medicaid claims. The number of beneficiaries vary from State to State.

d. *Period of Match:* The tape will be furnished by HCFA to the States, semi-annually (spring and fall), for continuous use by the States for a period not to exceed 18 months. The match may be renewed for a one year period if approved by the Data Integrity Board.

e. *Safeguards:* Before the BEST file is released to a State, the State must sign an agreement to protect the confidentiality of the information received.

Access to the records matched and to any records created by the match will be restricted to only those authorized employees and officials who need them to perform their official duties in connection with the match.

The records matched and any records created by the match will be stored in areas that are physically safe from access by unauthorized persons during duty hours as well as non-duty hours or when not in use.

The records matched and any records created by the match will be processed under the immediate supervision and control of the authorized personnel in a manner which will protect the confidentiality of the records and in such a way that unauthorized persons cannot retrieve any such records by computer, remote terminal or other means.

All personnel who will have access to the records matched and to any records created by the match will be advised of the confidential nature of the information, the safeguards required to protect the information and the civil and criminal sanctions for noncompliance contained in applicable Federal laws.

f. *Retention and Disposition of Records:* When an updated BEST tape is received, the State agency is instructed to destroy the previous BEST file and put the tape in their blank tape inventory.

[FR Doc. 89–16987 Filed 7–19–89; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Underutilized and Unutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 20, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under

section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Finally, in lieu of declaring any particular property as excess, the landholding agency may decide to make the property available to the homeless for use on an interim basis.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: (Military Facilities) HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; Room 1E671 Pentagon, Washington, DC 20360–2600 (202) 693–4583; (Corps of Engineers civil works projects Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW, Washington DC 20415–1000 (202) 272–1750; U.S. Navy: Andrea Wohfeld, Code 20 YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325–7342; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535–7067. (These are not toll-free numbers.)

Date: July 14, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal, Housing Commissioner.

Number of properties ( )

Colorado

Bennett Army Natl. Guard Site (1)
Arapaho, CO
Landholding Agency: Army
Location: 30 miles SE of Denver
Comment: 242 acres with silos and underground rooms, partial use

Louisiana

Ouachita-Block River Navigation (1)
Sterlington Recreation
Sterling, LA
Landholding Agency: Army COE

North Carolina

City of Havelock (1)
Havelock, NC
Landholding Agency: Navy
Comment: 10.75 acres currently used by city for recreational park, lease expires 6/90

Puerto Rico

U.S. Naval Station (4)
Roosevelt Road
Puerto Rico, PR
Landholding Agency: GSA
Location: Properties 11E, 17E, 7, 12 Adjacent to south boundary
Comment: Accessible by rough terrain; appears to be a road

Washington

Ruston Way Natl. Guard Site (1)
3001 Starr Street
Tacoma, WA
Landholding Agency: Army
Comment: 5.5 acres

Suitable Buildings (By State)

Georgia

U.S. Army Signal Center, Fort Gordon (22)
Augusta, GA
Landholding Agency: Army
Comment: Buildings will be relocated.
Location: Properties A–1624; R–0362 (128 sf); R–0262 (128 sf); 430 (3600 sf); 474 (1024 sf); 501 (2246 sf); 971 (5310 sf); 972 (5310 sf); 973 (1230 sf); 989 (2511 sf); 1104 (262 sf);10803 (3108 sf); 10805 (224 sf); 13302 (240 sf); 33434 (5310 sf); 33402 (5310 sf); 33404 (5310 sf); 33432 (5310 sf); 34419 (5310 sf); 51505 (144 sf); 61206 (224 sf); PA–3304 (312 sf, asbestos and termites)

Indiana

Fort Benjamin Harrison (1)
Harrison, IN
Landholding Agency: Army
Location: Property T00109
Comment: Large storage building in poor condition; (16,500 sf)

New Jersey

Nelson Courts Family Housing Units (45)
Fort Dix, NJ
Landholding Agency: Army
Comment: Asbestos present; Nelson Court approved for demolition Aug. 1989
Location: Properties 3301 (4 units, 4046 sf); 3302 (8 units, 8048 sf); 3303 (2 units); 3304 (8 units); 3305 (2 units); 3306 (8 units, 5368 sf); 3307 (4 units); 3310 (2 units, 1990 sf); 3314 (2 units, 1990 sf); 3374 (2 units 1990 sf); 3378 (2 units, 1990 sf); 3311 (2 units, 2150 sf); 3312 (6 units); 3313 (2 units, 2150 sf); 3375 (2 units); 3377 (2 units, 2216 sf); 3376 (6 units, 8604 sf); PA–3302 (Storage bldg, 624 sf); PA–3303 (312 sf); PA–3305 (detached storage bldg, 312 sf); PA–3306 (detached storage bldg); PA–3378 (detached storage bldg, 312 sf); PA–3310 (detached storage bldg); PA–3312 (storage bldg, 520 sf); PA–3375 (storage bldg, 416 sf); PA–3304 (312 sf).

New York

Stewart Army Support (1)
1210 Breunig Road
New Windsor, NY
Landholding agency: Army
Location: Property 1210

Comment: 25,690 sf dining hall, 30% utilized

South Carolina

Fort Jackson (1)
Garland Street
Fort Jackson, SC
Landholding agency: Army
Location: Property 9705, Admin Bldg
Comment: Building must be relocated; 1144 sf

Fort Jackson (1)
Garland Street
Fort Jackson, SC
Landholding agency: Army
Location: Property 9710, Mess Hall
Comment: Building must be relocated; asbestos present; 2512 sf

Texas

Fort Bliss (1)
Robert E. Lee Road
El Paso, TX
Landholding agency: Army
comment: 8615 sf; bldg must be relocated

Fort Bliss (1)
Robert E. Lee Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T5346
Comment: 1165 sf; bldg must be relocated

Fort Bliss (1)
Robert E. Lee Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T5376
Comment: 759 sf; bldg must be relocated

For Bliss (1)
Robert E. Lee Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–5445
Comment: 1165 sf; bldg must be relocated

Fort Bliss (1)
Pleasonton Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–1628
Comment: 3108 sf; bldg must be relocated

Fort Bliss (1)
Haan Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–1634
Comment: 2360 sf; bldg must be relocated

Fort Bliss (1)
Halbrook Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–838
Comment: 3108 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–847
Comment: 2360 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–848
Comment: 1144 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–849
Comment: 1296 sf; bldg must be relocated

Fort Bliss (1)
Lufberry Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–851
Comment: 1144 sf; bldg must be relocated

Fort Bliss (1)
Pleasonton Road
Fort Bliss, TX
Landholding agency: Army
Location: Property T–926
Comment: 2360 sf; bldg must be relocated

Virginia

Fort Lee (1)
Shop Road
Fort Lee, VA
Landholding agency: Army
Comment: 1575 sf; bldg must be relocated; partly stripped and deteriorating; utilities removed

Fort Lee (4)
Shop Road
Fort Lee, VA
Landholding agency: Army
Location: Properties 6015, 6024, 6025, 6026
Comment: Each bldg 5260 sf; no utilities; must be relocated

Fort Lee (1)
Lee Avenue
Fort Lee, VA
Landholding agency: Army
Comment: 15,275 sf; utilities removed; must be relocated

Washington

Ruston Way Natl Guard Site (1)
3001 Starr Street
Tacoma, WA
Landholding agency: Army
Comment: 50,000 sf; structurally unsound

Unsuitable Land (By State)

Number of Properties ( )

Georgia

U.S. Army Signal Center, Fort Gordon (16)
Augusta, GA
Landholding agency: Army
Location: Properties 946, 10807, 11803, 11808, 12302, 12802, 14302, 26302, 28302, 32302, 35302, 61202, 61207, 71202, 81202, 81207, 10305, 10804, 10803, 10806, 11811, 12805, 12811, 13803, 13804, 14304
Comment: Property not designated as unutilized or underutilized

Unsuitable Building (By State)

California

Camp Roberts (1)
San Luis Obispo
Monterey County CA
Landholding agency: Army
Location: Property 178 Units
Comment: Secured area

Camp Roberts (1)
San Luis Obispo
Monterey County CA
Landholding agency: Army
Location: Property 47 units
Comment: Secured area

Presidio of San Francisco (1)
San Francisco, CA
Landholding agency: Army
Location: Property T–681
Comment: Secure area

Oakland Army Base (1)
Oakland, CA
Landholding agency: Army
Location: Property 780
Comment: Secure facility

Oakland Army Base (1)
Oakland, CA
Landholding agency: Army
Location: Property 640
Comment: Secure facility

Navajo Army Depot Activity (1)
1 mile SI–40
Bellemont, CO
Landholding agency: Army
Location: Buffer area between perimeter fence and ammunition bunkers
Comment: 5 bldgs, 1497 sf each; within 2000 feet from flammable or explosive material

Fort Carson (4)
Fort Carson, CO
Landholding agency: Army
Location: Property T–1002, T–1003, T–1004, T–1105
Comment: Secured area

Maryland

Fort Detrick (1)
Porter Street
Frederick, MD
Landholding agency: Army

Comment: Bldg severely deterioriated.

[FR Doc. 89-17031 Filed 7-19-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

July 11, 1989.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Paucatuck Eastern Pequot Indians of Connecticut, c/o Ms. Agnes E. Cunha, 939 Lantern Hill Road, Ledyard, Connecticut 06339 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The letter petition was received by the Bureau of Indian Affairs on July 20, 1989, and was signed by the Chairman and members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627-MIB, 18th and C Streets NW., Washington, DC 20240, Phone: (202) 343-3592.

Hazel E. Elbert,

Deputy to the Asssistant Secretary—Indians Affairs (Tribal Services).

[FR Doc. 89-16994 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NM-010-09-4320-12/GP9-0119]

District Grazing Advisory Board Meeting; Albuquerque, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Board Meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on Wednesday, August 23, 1989, at 9:00 a.m., in the BLM Farmington Area Office located at 1235 La Plata Highway in Farmington, New Mexico.

The agenda for the meeting will include:

1. Introduction and opening remaks.
2. Review of final ranking of FY 90 Range Improvement Projects.
3. Range improvements progress report for FY 89.
4. Drought policy proposal.
5. Big game transplants.

The meeting is open to the public. Any one interested in attending this meeting to make a presentation must notify the District Manager by August 13, 1989. Written statements may also be filed for the Board's consideration.

Summary minutes of the meeting will be on file in the Albuquerque District Office and available for public inspection during business hours within 30 days of the meeting.

FOR FURTHER INFORMATION CONTACT: Gary Wood, District Range Conservationist, BLM, 435 Montano NE, Albuquerque, New Mexico 87107.

Robert T. Dale,

District Manager.

[FR Doc. 89-17047 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-FB-M

[CA-060-09-4352-10]

California Desert District Desert Tortoise Coordinating Committee Meetings

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 and 94-579 that the California Desert District Advisory Council will be meeting as the District's Desert Tortoise Coordinating Committee on Saturday, August 26, 1989, from 9:30 a.m. to 5:00 p.m. at the Heritage Inn, 1050 North Norma, Ridgecrest, CA.

The agenda for the meeting will include:

—Report from the Advisory Council's Desert Tortoise Subcommittee
—Report from the Desert Tortoise Technical Committee
—Discussion of the potential effects of State and Federal listing of the desert tortoise as a threatened and/or endangered species on tortoise management in the California Desert District
—Review and comment on the District's Fiscal Year 1990 budget and priorities for desert tortoise management
—Discussion of a public education and information program regarding desert tortoises
—Discussion of other current issues facing tortoise management

The meeting is open to the public, with time allotted for public comment.

In preparation for this meeting, the District Advisory Council's Desert Tortoise Subcommittee will meet on July 24, 1989, at 7:30 p.m. in the San Bernardino County Air Pollution Control District Office, 15428 Civic Drive, Suite 200, Victorville, California. The subcommittee will hold a general discussion of desert tortoise issues and develop a detailed agenda for the August 26 meeting. The public is welcome to attend, but the Council would prefer that the public defer making their comments until the full Coordinating Committee meets on August 26.

FOR FURTHER INFORMATION CONTACT: Wes Chambers of the Bureau of Land Management's California Desert District Office, 1695 Spruce Street, Riverside, California 92507-2497, (714) 351-6402.

Dated: July 13, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-16990 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-40-M

[UT-040-09-4830-12]

Cedar City District Multiple Use Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a field meeting of the Cedar City District Multiple Use Advisory Council will be held Tuesday, August 22, 1989. The meeting will begin at 8:45 a.m. in the Kanab Area Office at 320 North First Street, Kanab, Utah. The agenda will include: Kanab and Escalante Resource Area land use planning; Andalex Coal Mining proposal; drought; riparian improvement projects; and a review of ongoing activities in the Kanab Resource Area.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:00 a.m., or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must

notify the District manager, 176 East DL Sargent Drive, Cedar City, Utah 84720 by Wednesday, August 16, 1989. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or the Council Chairman.

Following oral public statements, the Council will depart for a field trip. Persons interested in accompanying the Council on the field trip must provide their own four wheel drive transportation and lunch.

Date: July 12, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-16995 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-920-89-4111-15; COC31055]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC31055 for lands in Routt County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Mary Patricia Nagel,

Acting Chief Fluid Minerals Adjudication Section.

[FR Doc. 89-16996 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-920-09-4212-12 and 15; AZA-23700]

Arizona; Notice of Realty Action; Transfer of Public Land to State of Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

FOR FURTHER INFORMATION CONTACT: Barbara Ahern, Phoenix District Office, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona 85027 (602) 863-4464.

SUMMARY: The Notice of Realty Action published on Wednesday, June 28, 1989, in **Federal Register** document 89-15257, Vol. 54, No. 123, on page 27215, is hereby corrected to read as follows:

Column 2, line 63, change "11,500" to "90,000"

Column 2, line 27, change "Pinal County" to "Pima County".

Henri R. Bisson,

District Manager.

[FR Doc. 89-16997 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-32-M

[OR 45150; (OR-035-82-3110-10-8006; GP9-265)]

Realty Action Exchange of Public Lands in Malheur County, Oregon

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 40 S., R. 40 E.,
Sec. 21: SE¼SE¼;
Sec. 22: S½S½;
Sec. 23: S½SW¼;
Sec. 26: E½NW¼, SW¼NW¼, SW¼;
Sec. 27: W½NE¼, SE¼NE¼, NW¼, S½;
Sec. 28: E½E½;
Sec. 34: NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35: W½;
T. 41 S., R. 40 E.;
Sec. 2: N½NW¼, SE¼NW¼.
T. 41 S., R. 42 E.;
Sec. 4: N½SE¼.

The area described aggregates 2240.00 acres in Malheur County, Oregon.

In exchange for these lands, the United States will acquire the following described private lands from Wilkinson Ranches:

Willamette Meridian

T. 39 S., R. 40 E.,
Sec. 31: Lot 2.
T. 40 S., R. 39 E.,
Sec. 4: W½SW¼;
Sec. 5: Lot 4, S½NW¼, S½;
Sec. 8: NE¼, N½SE¼, SE¼SE¼;
Sec. 9: W½.
T. 40 S., R. 40 E.,
Sec. 3: Lot 4;
Sec. 36: All.

The area described aggregates 1828.68 acres in Malheur County, Oregon.

The purpose of this exchange is to acquire non-Federal land inholdings in wilderness study areas within the Trout Creek Mountains to enhance wilderness characteristics and improve wilderness manageability and to achieve more efficient management of the public lands through consolidation of ownership. The non-Federal land also possesses significant riparian and wildlife habitat. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership. Some of the lands identified above may also be deleted to eliminate conflicts that arise during processing.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights, including but not limited to any right-of-way, easement or lease of record.

3. Grazing permits authorized under the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), will remain in effect until the end of the two year prior notification period, unless unconditionally waived by the permittee.

4. Mineral rights may be reserved dependent upon the findings in the mineral report.

5. All necessary clearances for cultural resources and threatened and endangered plants and animals shall be granted prior to conveyance of title.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

For detailed information concerning this exchange, contact Jim Ledger, BLM Baker Resource Area Office, (503) 523-6391, Ext. 324.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Vale District, 100 East Oregon St., Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this

realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of Issue: July 11, 1989.

David Lodzinski,

Acting District Manager.

[FR Doc. 89-16956 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-33-M

[OR 45151; (OR-035-82-3110-10-8006; GP9-266)]

Realty Action Exchange of Public Lands in Malheur County, Oregon

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 38 S., R. 40 E.,
Sec. 34: E½E½, E½SW¼SE¼;
Sec. 35: N½, SW¼, NW¼SE¼.
T. 39 S., R. 40 E.,
Sec. 1: All;
Sec. 2: Lot 1, N½SE¼NE¼.
T. 38 S., R. 41 E.,
Sec. 31: Lot 1, N½NE¼, NE¼NW¼;
Sec. 33: NE¼;
Sec. 34: SE¼;
Sec. 35: S½SW¼.

The area described aggregates 1962.95 acres in Malheur County, Oregon.

In exchange for these lands, the United States will acquire the following described private lands from Oregon Canyon Ranches:

Willamette Meridian

T. 36 S., R. 37 E.,
Sec. 21: All.
T. 37 S., R. 40 E.,
Sec. 32: SE¼NW¼.
T. 38 S., R. 40 E.,
Sec. 9: NW¼SE¼;
Sec. 16: SW¼, NE¼SE¼;
Sec. 28: SW¼NW¼;
Sec. 29: NW¼NW¼.
T. 39 S., R. 40 E.,
Sec. 4: SW¼NW¼.
T. 34 S., R. 41 E.,
Sec. 16: All.
T. 39 S., R. 42 E.,
Sec. 32: SW¼SE¼.

The area described aggregates 1720.00 acres in Malheur County, Oregon.

The purpose of this exchange is to acquire non-Federal land inholdings in wilderness study areas within the Trout Creek Mountains to enhance wilderness characteristics and improve wilderness manageability and to achieve more efficient management of the public lands through consolidation of ownership. The non-Federal land also possesses significant riparian and wildlife habitat. The public interest will be well served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through acreage adjustment, or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership. Some of the lands identified above may also be deleted to eliminate conflicts that arise during processing.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

2. All valid existing rights, including but not limited to any right-of-way, easement or lease of record.

3. Grazing permits authorized under the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), will remain in effect until the end of the two year prior notification period, unless unconditionally waived by the permittee.

4. Mineral rights may be reserved dependent upon the findings in the mineral report.

5. All necessary clearances for cultural resources and threatened and endangered plants and animals shall be granted prior to conveyance of title.

Publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

For detailed information concerning this exchange, contact Jim Ledger, BLM Baker Resource Area Office, (503) 523-6391, Ext. 324.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Vale District, 100 East Oregon St., Vale, Oregon 97918. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of Issue: July 11, 1989.

David Lodzinski,

Acting District Manager.

[FR Doc. 89-16957 Filed 7-19-89; 8:45 am]

BILLING CODE 4310-33-M

[NV-930-05-4333-11]

Camping Stay Limits for Public Lands; Las Vegas, Nevada District

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Establishment of Camping Stay Limit for Public Lands Administered by the BLM in the Las Vegas District, Nevada.

SUMMARY: Person(s) may occupy a site or multiple sites within a ten (10) mile radius on public lands not closed or otherwise restricted to camping within the Las Vegas District for a total period of not more than fourteen (14) days during any twenty-eight (28) day period. Following the fourteen (14) day period, person(s) may not relocate within a distance of ten (10) miles of the site that was just previously occupied until completion of the twenty-eight (28) day period. The fourteen (14) day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension of the fourteen (14) day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Las Vegas District for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping limit does not apply to Long Term Visitor Use Areas so designated by the Las Vegas District.

EFFECTIVE DATE: Fifteen (15) days following the thirty (30) day public comment period to allow for analysis of public comments.

Comment Period: The BLM requests comments from the public concerning the establishment of camping stay limits for public lands administered by the BLM in the Las Vegas District, Nevada. The comment period will be open until August 21, 1989. Comments received or postmarked after the close of the comment period may not be considered in finalizing these camping stay limitations.

ADDRESS: Comments should be sent to District Manager, Las Vegas District

Office, 4765 W. Vegas Driver, P.O. Box 26569, Las Vegas, Nevada 89125.

SUPPLEMENTARY INFORMATION: This camping stay is consistent with BLM policy and is being established in order to assist the BLM in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Las Vegas District. Of equal importance is the problem of long-term camping which precludes equal opportunities for other members of the public to camp in the area which creates user conflicts.

Authority for this camping stay limit is contained in CFR Title 43, Chapter II, Part 8360, Subpart 8364.1, Subpart 8365, Subpart 8365.1–2, 8365.1–6, and 8365.2–3.

8360.0–7 Penalties: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7 are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

Date: July 12, 1989.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 89–16998 Filed 7–19–89; 8:45 am]

BILLING CODE 4310–84–M

[ID–942–09–4730–12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., July 12, 1989.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines and the subdivision of section 33, T. 45 N., R. 4 W., Boise Meridian, Idaho, Group No. 733, was accepted July 11, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

July 12, 1989.

[FR Doc. 89–16999 Filed 7–19–89; 8:45 am]

BILLING CODE 4310–GG–M

[OR–942–09–4730–12: GP9–285]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 5 S., R. 10 E., accepted June 9, 1989
T. 13 S., R. 31 E., accepted May 12, 1989

Washington

T. 21 N., R. 4 W., accepted June 9, 1989
T 2 N., R. 1 E., accepted June 9, 1989
T. 8 N., R. 15 E., accepted June 23, 1989
T. 8 N., R. 16 E., accepted June 23, 1989
T 36 N., R. 42 E., accepted May 12, 1989.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: July 11, 1989.

[FR Doc. 89–17048 Filed 7–19–89; 8:45 am]

BILLING CODE 4510–33–M

[CO–930–09–4214–10; C–34653]

Amendment to Withdrawal Application and Opportunity for Public Meeting; Colorado

July 14, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior has filed an application to amend the Windy Gap Archaeological Site withdrawal application to include an additional 40-acre parcel of public land. This notice provides an opportunity for a public meeting and public comment on this parcel but does not segregate the land from operation of any of the public land laws since the 2-year segregation period provided by the original application has terminated.

DATE: Comments or requests for public meeting should be received on or before October 18, 1989.

ADDRESS: Comments or requests for public meeting should be addressed to the State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–236–1752.

SUPPLEMENTARY INFORMATION: On July 12, 1989, an application was approved to amend withdrawal application C–24653 which requested a 20-year protective withdrawal to allow for the preservation and development of archaeological values. This amendment affects the following described land:

Sixth Principal Meridian

T. 2 N., R. 76 W., sec. 17, SW¼SE¼.

The area described aggegates approximately 40 acres of public land in Grand County.

Effective on date of publication, this land becomes a part of the Windy Gap Archaeological Site withdrawal application and is subject to the requirements set forth in 52 FR 5350 published on February 20, 1987.

Any persons who desire to comment in connection with this 40-acre site may submit their views in writing to the Colorado State Director at the address shown above within the 90-day comment period.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 89–17049 Filed 7–19–89; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6673, Block 187, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on July 12, 1989. Comments must be received within on or before August 4, 1989 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 13, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–17000 Filed 7–19–89; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: July 28, 1989, 7:00 p.m.[1] Inclement Weather Reschedule Date: August 11, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12765–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround disposal of septage materials in the Upper Delaware Region.

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

The art of eel wier fishing on the Upper Delaware River, including a video recorded tape of the process.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware scenic and Recreational River; River Road, 1–3/4 miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89–17062 Filed 7–19–89; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 A]

State Intrastate Rail Rate Authority (Pub. L. 96–448); Recertification Process

AGENCY: Interstate Commerce Commission.

ACTION: Policy Statement.

SUMMARY: To continue to exercise jurisdiction over intrastate railroad rates, State authorities are required under 49 U.S.C. 11501(b)(5)(A) to resubmit standards and procedures consistent with Federal law for I.C.C. approval. This notice adopts simplified procedures for use in fulfilling this requirement. The procedures are outlined below.

EFFECTIVE DATE: These procedures are effective on August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: States seeking recertification will not be required to resubmit their previously approved standards and procedures. Instead, they will be required to certify that their standards and procedures remain the same, except as updated to conform with changes in Federal standards. The States will also be required to submit a list of these updates, which may include all Federal changes. They must certify that they have adopted these changes and incorporated them into their standards and procedures. Finally, States must certify that their intrastate authority will be exercised in accordance with Federal

law, and that Federal law will govern even if not explicitly so provided in their rules. To aid States in updating their standards and procedures, Appendix C to the decision in this proceeding lists those updates that should have been made to date.

It is each State's responsibility to maintain eligibility to regulate by seeking recertification prior to the expiration date of its existing certification. The Commission does not notify States that their existing certifications are nearing expiration. To prevent any lapse in certification, the timely filing of the above information will constitute automatic provisional certification for the State to continue regulation under its previously approved plan while its request for recertification is processed. A Notice of Provisional Certification will be published in the Federal Register. This simplified process will be unavailable to States not previously certified or to those States that allow their certification to expire.

When the State files the required information with us, it must also serve a copy on all interstate railroads operating in the State. The carriers will have 30 days to file comments. Comments may include requests that this abbreviated procedure not be used, but such requests must be accompanied by compelling evidence that a more rigorous investigation of the State's activities is warranted, *i.e.*, that the State's actions have been in conflict with Federal law and therefore that the presumptions upon which this abbreviated process is based do not apply. The State may reply to any comments. The Commission will either extend recertification, or take other action appropriate in the circumstances. Notice will be published in the Federal Register concerning all final decisions.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 275-1721.)

Decided: July 12, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17037 Filed 7-19-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31492]

Itel Corp. et al.; Notice of Exemption

In the matter of Itel Corporation, Itel Rail Holdings Corporation, Itel HG, Inc., Signal Capital Holdings Corporation, and Itel Rail Corporation—transfer of control exemption—Hartford & Slocomb Railroad Company, McCloud River Railroad Company, Green Bay & Western Railroad Company, Ahnapee & Western Railroad Company, Fox River Valley Railroad Corporation, and The Ferdinand and Huntingburg Railroad Company.

Itel Corporation (Itel), a noncarrier, and its direct and indirect wholly owned subsidiaries discussed below have filed a notice of exemption for the transfer of control of Itel's rail carrier subsidiaries within the corporate family. The restructuring is for the purpose of consolidating Itel's car leasing business.

The former Itel Rail Corporation, a wholly owned subsidiary of Itel, has been renamed Itel Rail Holdings Corporation (Itel Rail Holdings). Prior to the initial restructuring, it directly or indirectly controlled five Class III rail carriers, Hartford & Slocomb Railroad Company, McCloud River Railroad Company, Green Bay & Western Railroad Company (GB&W), Ahnapee & Western Railway Company (A&W) (a subsidiary of GB&W), the Ferdinand and Huntingburg Railroad Company (F&H) (a subsidiary of Itel Railcar Corporation), and one recently created carrier, Fox River Valley Railroad Corporation (formerly FRVR Corporation), which will be a Class II or Class III rail carrier, depending upon the results of its operations.

The initial phase of the restructuring occurred on February 2, 1989, and created the following new noncarrier subsidiaries. Itel HG, Inc. has become a wholly owned subsidiary of Itel Rail Holdings and in turn wholly owns Signal Capital Holdings Corporation (Signal Capital). Pullman Leasing Company (Pullman) is now a wholly owned subsidiary of Signal Capital and in turn wholly owns a newly formed Itel Rail Corporation. Itel Railcar Corporation (Itel Railcar) is now a wholly owned subsidiary of the new Itel Rail Corporation (Current Rail), with F&H continuing as subsidiary of Itel Railcar.

The second phase of the restructuring occurred after the effective date of the notice of exemption in Finance Docket No. 31413, served and published in the Federal Register on March 23, 1989, 54 FR 12026. That notice exempted the transfer of control resulting from the transfer of the stock of Itel's remaining regulated carrier subsidiaries first to Pullman and then to Pullman's direct subsidiary, Itel Rail Corporation (the A&W continued to be a subsidiary of the GB&W). After this part of the subsidiaries were interposed between Itel Rail Holdings and the carrier subsidiaries.

Continuing this restructuring, Itel Railcar will be merged into Current Rail, and Current Rail as the surviving corporation. Current Rail will then be merged into Pullman, with Pullman as the surviving corporation whose name will be changed to Itel Rail Corporation (New Rail). This restructuring will not occur until after this notice has become effective.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect operating efficiencies.

To ensure that all employees who may be effected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing or a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Thomas J. Byrne, Carl V. Lyon, Itel Corporation, 1101 30th Street, NW., Suite 302, Washington, DC 20007

John M. Nannes, Robert A. Potter, Skadden, Arps, Slate, Meagher & Flom, 1440 New York, Avenue, NW., Washington, DC 20005.

Decided: July 14, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-17038 Filed 7-19-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental

policy, 28 CFR 50.7, notice is hereby given that on June 30, 1989, a proposed Partial Consent Decree in *United States* v. *Kayser Roth Corporation, et al.*, Civil No. 88–0325–B, was lodged with the United States District Court for the District of Rhode Island related to defendant Hydro-Manufacturing, Inc. The proposed Consent Decree concerns the recovery of costs incurred and costs to be incurred to respond to the release and threatened release of hazardous substances at the Stamina Mills Superfund Site in Forestdale, Rhode Island pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended. Under the terms of the Consent Decree, Hydro will, at some future date agreed to by the United States Environmental Protection Agency, sell the Stamina Mills Site property and transmit the net proceeds from the sale to the Superfund. In addition, Hydro will pay the future taxes for the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Jay Printing, D.J. Ref. 90–11–2–356.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Rhode Island, Westminster Square Building, 10th Floor, 10 Dorrance Street, Providence, Rhode Island and at the Region 1 Office of the Environmental Protection Agency, J.F.K. Federal Building, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.20 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–17001 Filed 7–19–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 11, 1989, a proposed Consent Decree in *United States* v. *LTV Steel Company, Inc.* Civil Action No. 89–C–5387, was lodged with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves a judicial enforcement action brought by the United States against LTV Steel Company, Inc. (LTC) under the Clean Air Act for violations of the Prevention of Significant Deterioration (PSD) permit issued by the U.S. Environmental Protection Agency in 1979 for a coke battery at LTV's Chicago, Illinois steel-making facility located at 11600 South Burley Avenue, Chicago, Illinois.

The proposed Consent Decree requires LTV to achieve compliance with the PSD permit limit of 5% on leaking coke oven doors (with an exclusion of two doors), and requires that LTV install brand new doors (already accomplished), as well as new door jambs and jamb sealing systems. Under the Decree, LTV must demonstrate final compliance by August 1, 1979, and the Decree provides for stipulated penalties for any noncompliance. In addition, the Consent Decree provides that LTV is liable for a civil penalty of $337,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC and should refer to *United States* v. *LTV Steel Company*, D.J. #90–5–2–1–993.

The proposed Consent Decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604, and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–17002 Filed 7–19–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(i), notice is hereby given that on June 22, 1989, a proposed consent decree in *United States of America* v. *Nabisco, Inc., et al.*, Civil Action No. CV–86–3277, has been lodged with the United States District Court for the Eastern District of New York. This consent decree resolves the United States' claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for recovery of initial cleanup costs incurred by the United States Environmental Protection Agency ("EPA") in response to hazardous substances released at a site (the "Sag Harbor Site") located near the Village of Sag Harbor, Long Island, New York.

The consent decree provides that the defendants will pay $400,000 to the Hazardous Substance Superfund in reimbursement of the costs of certain work performed by EPA at the Sag Harbor Site prior to the lodging of the consent decree, together with prejudgment interest and enforcement costs. The defendants have separately agreed, in an administrative order on consent, to undertake additional investigations of the contamination at the Sag Harbor Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Nabisco, Inc.*, D.J. Ref. 90–11–3–112.

The proposed consent decree may be examined at the office of the United States Attorney, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth

Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, at the above address.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17003 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that on July 7, 1989, a proposed Consent Decree in *United States* v. *Texaco, Inc.* was lodged with the United States District Court for the District of Rhode Island. This agreement resolves a judicial enforcement action brought by the United States against Texaco, Inc. which alleged violations of Section 111 of the Clean Air Act, 42 U.S.C. 7411, and the New Source Performance Standards for Bulk Gasoline Terminals, 40 CFR Part 60, Subpart XX, at the bulk gasoline loading terminal formerly owned by Texaco, Inc. located in Providence, Rhode Island.

The consent decree provides for the payment of a civil penalty of $65,000 for past violations of the Clean Air Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *Texaco, Inc.*, D.J. Ref. No. 90-5-2-1-1269.

The proposed Consent Decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, District of Rhode Island, 10 Dorrance Street, Providence, RI 02903

EPA

Office of Regional Counsel, Region 1, John F. Kennedy Federal Bldg., Boston, MA 02203

A copy of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the Decree, please enclose a check payable to the Treasurer of the United States in the amount of $1.90 for reproduction costs.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-17004 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; the Development of a Computer-Aided Armor Design/Analysis System

Notice is hereby given that, on June 26, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "The Development of a Computer-Aided Armor Design/Analysis System." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are:

1. Chamberlain Manufacturing Corporation (effective April 3, 1989)
2. AAI Corporation (effective April 19, 1989)
3. FMC Corporation (effective April 20, 1989)
4. Honeywell, Inc. (effective May 18, 1989)

The purpose of the project is to advance the state-of-the-art in analytical procedures for use in the analysis of threat/armor interactions. The major tasks involve: (1) The assessment of existing engineering models; (2) the adaptation of existing models into forms which can be used interchangeably within the software being developed; (3) the enhancement of existing models where deficiencies are found; and (4) the development of software which can be used by researchers to analyze and design armor systems.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-17045 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Quotas for Controlled Substances in Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of established 1989 aggregate production quotas.

SUMMARY: This notice establishes revised 1989 aggregate production quotas for controlled substances in Schedule II, as required under the Controlled Substances Act of 1970.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to Section 0.100 of Title 21 of the Code of Federal Regulations.

On April 24, 1989, a notice of the proposed revised 1989 aggregate production quotas for certain controlled substances in Schedule II was published in the **Federal Register** (54 FR 16418). All interested parties were invited to comment on or object to these proposed aggregate production quotas on or before May 24, 1989. No comments or objections were received.

Pursuant to Sections 3(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by Section 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1989 revised aggregate production quotas be established as follows:

Basic class	Established revised 1989 aggregate production quotas (expressed as grams of anhydrous acid or base)
Schedule II:	
Amobarbital	160,000
Amphetamine	352,000
Codeine (for conversion)	5,194,000
Desoxyephedrine	1,487,000
Levodesoxyephedrine	1,487,000
Methamphetamine	0
Dextropropoxyphene	82,381,000
Dihydrocodeine	269,000
Diphenoxylate	948,000
Fentanyl	18,000
Hydrocodone	3,244,000
Hydromorphone	221,000
Levorphenol	11,000
Methadone	1,856,000
Methadone Intermediate	2,320,000
Methamphetamine (for conversion)	965,000
Mixed Alkaloids of Opium	7,000
Morphine (for sale)	3,634,000
Oxycodone (for sale)	2,452,000
Pentobarbital	13,219,000
Phenylacetone	1,198,000
Secobarbital	545,000

Dated: June 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-16943 Filed 7-19-89; 8:45 am]

BILLING CODE 4410-09-M

Foreign Claims Settlement Commission

Privacy Act of 1974; New System of Records Notice; Egyptian Claims Program

AGENCY: Foreign Claims Settlement Commission, Justice.

ACTION: Notice of New System of Records.

SUMMARY: The Foreign Claims Settlement Commission (FCSC) hereby publishes notice that an additional records system will be established as of August 21, 1989, and designated "FCSC-35, Egypt, Claims Against." Any person interested in commenting on this system may do so by submitting comments in writing to the Administrative Office of the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579. Comments must be submitted on or before August 21, 1989. This new records system will be added to the Commission's current Privacy Act Systems of Records.

EFFECTIVE DATE: The system of records designated "FCSC-35, Egypt, Claims Against" shall be established and become effective on August 21, 1989, as published herein unless amended by notice published prior to that date. The existing systems of records continue in effect.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, 1111 20th Street NW., Room 400, Washington, DC 20579, Tel. (202) 653-5883, FAX (202) 653-6009.

FCSC-35

SYSTEM NAME:

Egypt, Claims Against.

SYSTEM LOCATION:

Foreign Claims Settlement Commission, 1111 20th Street NW., Room 400, Washington, DC 20579.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Natural and juridical persons who assert claims for property losses resulting from actions by the Government of the Arab Republic of Egypt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and amount of claim; description, ownership, and value of property; other evidence establishing entitlement to compensation of claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title I, International Claims Settlement Act of 1949, as amended, and the *Agreement Between the Government of the United States of America and the Government of the Arab Republic of Egypt Concerning Claims of Nationals of the United States of May 1, 1976.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used for the purpose of adjudicating claims of individuals; issuance of decisions concerning eligibility to receive compensation under the Act and Agreement; notifications to claimants of rights to appeal; and preparation of certifications of awards, if any, to the Treasury Department for payment. Names and other information furnished by claimants may be used for verifying citizenship status with the Immigration and Naturalization Service. The information contained in this system of records is considered by the Commission to be public information which may be disclosed as a routine use to interested persons who make inquiries about the claims program or individual claims therein including but not limited to Members of Congress or Congressional staff, staff of the Office of Management and Budget, other persons interested in the work of the Commission, and members of the news media.

Law Enforcement: In the event that a system of records maintained by FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions

is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim. Indexing by other information in the claim.

SAFEGUARDS:

At FCSC: Building employs security guards.

Records are maintained in locked room accessible to authorized FCSC personnel and other persons when accompanied by such personnel.

RETENTION AND DISPOSAL:

Records maintained under 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Office, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579; Phone (202) 653–6155 or FAX (202) 653–6009.

NOTIFICATION PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Dated at Washington, DC, on July 10, 1989.

Stanley J. Glod,

Chairman.

[FR Doc. 89–17005 Filed 7–19–89; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Mangement and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Mangement and Budget (OMB) for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission (new, revision, or extension):* Extension
2. *The title of the information collection:* 10 CFR 4, "Nondiscrimination in Federally Assisted Commission Programs."
3. *The form number if applicable:* Not applicable
4. *How often the collection is required:* On occasion
5. *Who will be required or asked to report:* Recipients of Federal financial assistance provided by the Nuclear Regulatory Commission
6. *An estimate of the number of responses:* 60 per year
7. *An estimate of the total number of hours needed to complete the requirement or request:* 176 hours annually (an average of .23 hours per response plus 5.6 hours per recordkeeper)
8. *An indication of whether section 3504(h), Pub. L. 96–511 applies:* Not applicable
9. *Abstract:* Recipients of NRC financial assistance provide data on procedures to provide assurance to NRC that they are in compliance with nondiscrimination policies.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicholas B. Garcia, Paperwork Reduction Project (3150–0053), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of July 1989.

For the U.S. Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–17021 Filed 7–19–89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35)

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* Request for Records.
3. *The form number if applicable:* NRC Form 57
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* Individuals requesting Public Document Room (PDR) documents
6. *An estimate of the number of responses:* 45,000 per year.
7. *An estimate of the total number of hours to complete the requirement or request:* 750 hours annually (45,000 forms × .01666 hr/form) or about 1 minute per individual.
8. *An indication of whether Section 3504(h), Pub. L. 96–511 applies:* Not applicable.
9. *Abstract:* This form is utilized by the public in the Public Document Room (PDR) in requesting documents for their use at the PDR; this form then serves as a suspense slip on the shelf when the document is charged out to a member of the public.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150–0063), Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of July 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89–17022 Filed 7–19–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272/311]

Public Service Electric and Gas Co.; Environmental Assessment And Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of a number of exemptions from the requirements of Appendix R to 10 CFR Part 50 to Public Service and Gas Company, et. al., for the Salem Generating Station, Units 1 and 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The licensee's request for the exemptions and the bases therefore are contained in a letter dated July 15, 1988. The exemptions relieve the licensee from the technical requirements concerning:

1. Non-3-hour fire-rated features in 3-hour fire barriers in various areas of the plants (Licensee Exemption 1);
2. Lack of a fixed fire suppression system in the control room (Licensee Exemption 2);
3. Lack of an automatic fire suppression system in the reactor plant auxiliary equipment area, elevations 100 and 110 feet (Licensee Exemption 3);
4. Lack of an automatic fire suppression system in the inner piping penetration area (Licensee Exemption 4),
5. Lack of an automatic fire suppresion system in the reactor plant auxiliary building, elevation 64 feet (Licensee Exemption 10);
6. Lack of an automatic fire suppression system in the mechanical penetration areas, elevations 78 and 100 feet (Licensee Exemption 5);
7. Lack of complete 1-hour fire rated barriers between redundant shutdown systems and a manually actuated fire suppression system in lieu of an automatic system in the 460V switchgear room (Licensee Exemption 6),
8. Lack of complete 1-hour fire rated barriers between redundant shutdown systems in the lower electrical penetration area (Licensee Exemption 8);
9. Lack of complete 1-hour fire rated barriers between redundant shutdown systems in the 4160 V switchgear room (Licensee Exemption 9);
10. Lack of complete 1-hour fire-rated barriers or 20 feet free of intervening combustibles between redundant systems in the reactor plant auxiliary equipment area, elevation 84 feet (Licensee Exemption 7);
11. Lack of complete 3-hour fire barriers between redundant shutdown systems in the RHR pump and heat exchanger areas (Licensee Exemption 13);
12 Lack of 20 feet of separation free of intervening combustibles between redundant shutdown systems in containment (Licensee Exemption 12);
13. Lack of an automatic fire suppression system and the absence of 20 feet of spatial separation between redundant systems in the pipe tunnel, elevation 84 feet (Licensee Exemption 14); and
14. Lack of an automatic fire suppression system in the CO_2 equipment room, elevation 84 feet (Licensee Exemption 15).

The Need for the Proposed Action

The proposed exemptions are needed because the features described in the licensee's request regarding the existing fire protection at the two plants for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemptions will provide a degree of fire protection that is equivalent to that required by 10 CFR Part 50, Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the proposed exemptions will not: increase the probability of fires; increase the post-fire radiological releases beyond those previously determined nor otherwise affect radiological plant effluents; and increase the probability or consequences of any reactor accident. Therefore, the Commission concludes that there is no significant radiological environmental impacts associated with these proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed exemptions, any alternatives to the exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemptions. Such action would not reduce the environmental impacts of Salem Unites 1 and 2 operations and would require additional time and resources to bring the facility into literal compliance with 10 CFR Part 50, Appendix R with no significant enhancement of the fire protection capability.

Alternative Use of Resources

These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Salem Generating Station, Unites 1 and 2," dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemptions. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemptions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to the proposed action, see the licensee's request for the exemptions dated July 15, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Salem Free County Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 6 day of July 1989.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2 Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17024 Filed 7–19–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Cancellation

The Advisory Committee on Nuclear Waste (ACNW) meeting scheduled for July 26–27, 1989, Room P–110, 7920 Norfolk Avenue, Bethesda, MD has been cancelled. This meeting notice was previously published on Tuesday, June 20, 1989 (54 FR 25919).

Date July 14, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–16942 Filed 7–19–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company, for operation of Zion Station, Units 1 and 2, located in Lake County, Illinois.

This amendment would permit temporary one-time changes to Zion Technical Specifications regarding the Auxiliary Electric Power that would allow performing extensive preventive maintenance, in accordance with the manufacturer's recommendation, on the diesel generator shared between the two units. Because the common diesel generator is shared, extended maintenance periods have not been available under present Technical Specifications, even during scheduled refueling outages of either of the two units. The proposed changes would extend the present allowable out-of-service period for the common diesel from 7 days to 45 days during which, with one unit in cold shutdown, only two diesel generators would be required to satisfy the standby AC on-site power requirements.

By August 21, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitoner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Paul C. Shemanski: petitioner's name and telephone number; date petition was mailed; plant number; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1) (i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 6, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the local public document room, Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 14th day of July 1989.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–17023 Filed 7–19–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27031; File No. SR-Amex-89-17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Effecting Delivery on Short Sales.

Pursuant to Section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on July 5, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its policy to require that members arrange to borrow securities, or obtain other assurances that delivery will be possible, prior to effecting short sales.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rule 784(C) requires members and member organizations to employ every reasonable means to borrow securities in order to make delivery on open contracts, but does not specifically require that arrangements be made to borrow the stock prior to effecting short sale transactions. However, the Exchange has periodically advised members to make such arrangements as to specific stocks, when, for instance, an increased short interest or undue concentration in the public ownership has been noted, resulting in a lack of liquidity in the borrowing market.

The Exchange is now proposing to amend its policy to require member organizations effecting short sales for both customer and proprietary accounts to, in all cases, either make prior arrangements to borrow the stock or obtain other acceptable assurances that delivery can be made on settlement date. Such assurances would include knowledge that the security is available for borrowing, conversion privileges, rights exercise or other similar situations, so long as the security needed for delivery can be exchanged in normal transfer time. The policy will provide an exception for short sales by specialists, market makers and odd-lot dealers in fulfilling their market making responsibilities. However, arbitrageurs and other participating traders will not be able to rely on this exception.

Implementation of the new policy is expected to provide increased stability to the market for Amex stocks subject to significant short selling, by decreasing the number of "fails" (*i.e.*, when a short seller is unable to effect delivery of the stock). It will also conform Amex policy to that of the New York Stock Exchange ("NYSE"), which has such a policy in effect, thereby eliminating confusion as to whether Amex policy is different for the NYSE's.[1]

(2) Basis

The proposed policy change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to "promote just and equitable principles of trade," and "protect investors and the public interest."

B. Self-Regulatory Organizations' Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by August 10, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 13, 1989.

[FR Doc. 89-16968 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* NYSE, *Interpretation Handbook* at 4450, Rule 440C.10/01 ("Deliveries Against Short Sales") (1984).

[Release No. 34-27012; File No. SR-BSE-87-1]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Approval of Proposed Rule Change Relating to the Establishment of the Boston Stock Exchange Automated Communications Order-routing Network (BEACON)

On February 22, 1989, the Boston Stock Exchange, Inc. ("BSE") requested that the Securities and Exchange Commission ("Commission") permanently approve the proposed BEACON system, an automated order-routing and execution system, and rules governing the system.[1] The Commission published notice of the request on March 8, 1989, in Securities Exchange Act Release No. 26578, 54 FR 9952. On August 25, 1988, BSE received approval to proceed with the implementation of BEACON up to full-scale operational levels during a six-month trial period, which ended on February 25, 1989. BSE requested an extension of this trial period until the Commission completed its review pursuant to BSE's request for permanent approval of BEACON.[2]

Description of Beacon

BEACON routes orders in eligible stocks from member firms to the BSE. For stocks traded on the Intermarket Trading System ("ITS"),[3] BEACON guarantees either an automatic or manual execution of up to either 599 or 1,299 shares, depending on the classification of the stock, at the BEACON quotation.[4] To accomplish this, a BEACON order electronically entered into the system by a member firm is transmitted to a BSE specialist's post where it is displayed on the specialists's terminal together with the automatically assigned BEACON quote at which the order would be automatically executed. The order is displayed on the specialist's terminal for up to 15 seconds to permit the specialist to intervene in the automatic execution of the order should he wish to improve on the BEACON quotation. Where the specialist does not intervene, the order automatically will be executed at the BEACON quote.

The BSE stated that it currently receives orders in 900 stocks (out of a total of 1,600 stocks listed on the exchange) from 7 firms through BEACON. All specialists on the floor have at least one stock for which market orders are automatically executed and reported back to the firm. In addition, BEACON now maintains day limit orders for all 900 issues for the specialist. One completed book (77 issues) has been activated in total.

BEACON will be interfaced with the BSE's BASE system,[5] a computerized back office system that currently processes all orders executed on the Exchange floor. Once the BEACON and BASE interface is completed, BASE will be able to generate a report immediately confirming the execution of a BEACON order, including the number of shares and the execution price, and transmit it to the member firm that entered the order. The new system will also be able to provide BSE specialists with continuous updates of their positions, average costs, concentrations (short or long), and a computerized limit order book.

Description of Proposed Rule

The BSE's proposed BEACON rules define the specific procedures for the entry and execution of orders in the system.[6] Section 1 of the proposed rules provides that BEACON is available to BSE member organizations and to foreign stock exchanges with which BSE has established a trading link. All issues traded on the Exchange will be eligible for processing through BEACON but only agency orders [7] will be eligible for automatic execution.

Section 2 provides that BEACON will permit orders to be routed to specialists or to floor brokers.[8] The system also will allow floor brokers to transmit orders to specialists. Under subparagraph (c), member firms may send market and limit orders to BSE over the system in size parameters established by the BSE.[9] Once orders are routed to the specialist, they may be executed either automatically (if eligible) or manually.

Execution parameters for BEACON are set out in Section 3 of the proposed rule. Market and marketable limit orders in issues traded over ITS transmitted to the specialist prior to the BSE's opening will be provided the opening price on the primary market on which the issue is traded. The primary market opening price usually will be the NYSE or Amex opening price for the stock. The only exception to applying the primary market opening price to an opening transaction would be where the member firm entering the order asks, instead, for the order to be provided the consolidated opening price.

Market and marketable limit orders entered after the opening will receive an execution price based upon the BEACON quotation.[10] As noted previously, these orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds (so-called "exposure period") to allow the specialist to improve on the BEACON quotation that was automatically determined when the

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[1] *See* letter from Geogre W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated February 22, 1989. The term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-1) was noticed in Securities Exchange Act Release No. 24187 (March 6, 1987), 52 FR 8682. No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were noticed in Securities Exchange Act Release No. 14690, July 9, 1987, 52 FR 26612. On December 8, 1987, June 10, 1988, July 1, 1988, and August 10, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission; however, on August 25, 1988, the Commission approved BEACON for a six-month trial period. Securities Exchange Act Release No. 26029 (August 25, 1988), 53 FR 27584.

[2] Securities Exchange Act Release No. 26578, (March 8, 1989), 54 FR 9952.

[3] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. Specifically, ITS links the participating markets (American Stock Exchange, BSE, Cincinnati Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange, and the National Association of Securities Dealers) and provides facilities and procedures for: (1) Display of composite quotation information from each participating market so that brokers are able to determine the best bid and offer available from any participating market for a multiply traded security; (2) efficient routing of orders and administrative messages between participating markets; and (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets. As of May 30, 1989, 1,961 stocks were traded over ITS.

[4] *See* discussion *infra* note 9.

[5] "BASE" is an acronym for Brokerage Accounting Systems Element.

[6] These include how orders are entered into the system, the types of orders that may be entered, how orders will be executed, how the execution price will be determined, and how the system may be used to route orders.

[7] The term agency order refers to orders executed on behalf of a member organization's client.

[8] A floor broker receiving such an order would bring the order to the trading crowd for execution.

[9] The BSE has informed the Commission that there are currently no size limits for orders routed on BEACON and that it has no plans to adopt such limits. Telephone conversation between George W. Mann, Jr., Senior Vice President and General Counsel, BSE, and Howard Kramer, Assistant Director, Division of Market Regulation, on June 30, 1988. Automatic execution limits for BEACON are discussed *infra* at note 12. Should BSE determine to implement size limits, it would have to submit those size limits to the Commission for review.

[10] The BEACON quotation, defined in section 5(c) of the proposed rule, is the primary market quotation price, except that, where bids and offers from other markets are displayed that are superior to the BEACON price, the BEACON order will be executed at that superior price up to the size of the quote displayed.

system received the order. Certain types of orders entered on BEACON shall always be manually executed.[11]

The circumstances under which orders entered on BEACON are eligible for automatic execution are set forth in Section 5 of the proposed rule.[12] The system automatically will execute all market and marketable limit orders in ITS issues up to 1,299 shares for Tier I stocks and 599 shares for Tier II stocks.[13] This section also permits specialists to provide guaranteed automatic execution of 2,500 shares on specific stocks.[14] Automatic execution guarantee levels for BEACON orders will be published in BEACON and in hard copy. Guarantee levels in excess of 2,500 shares may be made by arrangement between a specialist and a specific member organization. These guarantees will not be published in BEACON unless requested by the specialist.

Market orders that would be executed outside the primary market price range for the day will be "stopped" and will be executed at the BEACON quotation or better as subsequent trades occur on the consolidated tape. An order that has been "stopped" must be executed by the close of trading.

Discussion

The Commission has determined that it is appropriate to permanently approve the implementation and operation of the BEACON system. The proposed BEACON system is similar in many respects to automatic execution systems currently in operation on other regional stock exchanges such as the Midwest Stock Exchange's "MAX" system and the Pacific Stock Exchange's "SCOREX" system. These systems are designed to receive small orders electronically from member firms and route them to the appropriate specialist for automatic or manual execution. These systems provide the primary means of handling the vast majority of small orders executed on these regional exchanges.

On July 15, 1988, the Commission gave approval to the BSE to proceed with the initial stages of the implementation of BEACON [15] and on August 25, 1988, authorized the BSE to institute a six-month trial period during which the BSE was to gradually phase-in use of BEACON.[16] The Commission reviewed results of the operational tests on the system as the Exchange added stocks and connected more specialist posts and member firms to BEACON. In addition, the BSE submitted results of stress tests on the system to demonstrate that BEACON has the capacity to handle transaction and other volume levels that surpassed those encountered by the Exchange during the October 1987 market break without experiencing significant order queues or delays in execution.[17] The BSE stated that BEACON was easily able to handle the traffic from SIAC and had excess capacity of approximately 20–35%.[18]

The Commission has received and reviewed the preliminary test results on the implementation stages of BEACON. From the data provided by the Exchange and discussions with BSE officials, the Commission is satisfied with the results of the pilot period.

Approval of Proposed Rule Change

On the basis of the BSE's experience with BEACON in the trial period to date, the Commission has concluded that it is appropriate to grant the BSE approval of the BEACON system. Accordingly, the Commission has determined that the BSE may continue its implementation of BEACON up to full-scale operational levels, operating under the procedures outlined in the proposed BEACON rule, as amended. We note, however, that in order for the Commission to continue its oversight of the BEACON system, the BSE shall continue to provide it with the same monthly statistical information as it has provided during the pilot period.

In view of the above, the Commission concludes that proposed rule change is consistent with the requirements of the Act, particularly section 6(b)(5), in that it facilitates transactions in securities and removes impediments to the mechanism of a free and open market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 10, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16969 Filed 7–19–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27016; File No. SR–MSRB–89–4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Professional Qualifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board hereby submits revised examination specifications and a revised study outline for the Municipal Securities Representative Qualification Examination (Series 52). The Board requests that the Commission delay the effectiveness of the proposed rule change until January 1, 1990, in order to permit the Series 52 question bank to be updated to reflect the revised test specifications and study outline and to provide time for information concerning

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[11] These include cross orders entered in the system; non-marketable limit orders; orders that are "stopped"; and orders entered prior to opening, which are executed at the primary market opening price.

[12] As noted previously, automatic execution guarantees under BEACON are available to agency orders only.

[13] Subparagraph (b) of section 5 provides that all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that would set forth the specific reasons that would cause Tier I classification of the stock to be burdensome (*e.g.*, a high priced, lightly traded stock).

[14] The Exchange currently has an execution guarantee under Chapter II, Section 33 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 to 1,299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2,500 shares. Market orders filled under this guarantee must be filled on the basis of the Consolidated Quotation System ("CQS") best bid or offer or better.

[15] Securities Exchange Act Release No. 25918 (July 15, 1988), 53 FR 27584.

[16] Securities Exchange Act Release No. 26029 (August 25, 1988) , 53 FR 33565.

[17] *See* letters from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated August 17, 1988; to Richard G. Ketchum, Director, Division of Market Regulation, dated December 14, 1988; to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated February 22, 1989 and June 9, 1989.

The tests were conducted by SIAC and designed to test the performance of vendors and other market participants such as the BSE to receive output from the consolidated transaction and quotation lines for equities and options.

[18] *See* letter from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated February 22, 1989.

the revised study outline to be circulated to the industry.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is the Board's responsibility under section 15B(b)(2)(A) of the Act to propose and adopt rules that:

> provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or attempt to induce the purchase or sale of, any municipal security unless * * * such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors.

Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

Specific subjects and questions have been updated from time to time in the Series 52 examination to reflect changes in the municipal securities industry or in Board rules. At this time, however, the Board's Professional Qualification Advisory Committee ("PQAC") [1] determined that a comprehensive review of the current study outline should be undertaken, both to ensure that the subject matter reflected current products and practices, and to realign some of the topics for clarity. The Series 52 examination contains questions not only on municipal securities and the municipal markets but also on U.S. Government, federal agency and money market instruments, government economic policy and behavior of interest rates, and applicable federal securities laws and regulations.

To achieve the PQAC's objective of the study outline reflecting current products and practices and ensuring clarity, some topics have been revised (*e.g.*, the section on "Revenue Bonds" was expanded and reformatted to reflect the increasing use of these bonds in the market). The most significant revision made to the current study outline concerns the topic of customer suitability. The current examination tests suitability indirectly by testing the components of suitability (*e.g.*, product knowledge, tax considerations, and Board rules). The revised study outline contains the topic "Customer Suitability Considerations" as a direct means to test suitability. This will be achieved by requiring the candidates to answer "application" questions by making suitability determinations with respect to a given customer's financial profile, investment objectives, tax status and similar information.[2]

The examination specifications specify how the questions asked on each examination are to be allocated among the various topics. In general, the PQAC concluded that the allocation of questions in the current examination specifications are appropriate, although some changes were made to increase questions on some topics and to decrease the number in other topic areas. The revised queston allocation to Part Two (U.S. Government, Federal Agencies and Other Financial Instruments) reflects a realignment of the subject matter. The revised examination specifications have been filed under a separate letter requesting confidential treatment to Jonathan G. Katz, Secretary, SEC.

The revised examination will remain a three-hour 100 question examination administered by the National Association of Securities Dealers, Inc. using Control Data Corporation's PLATO computer system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposed of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

[1] The PQAC is composed of the Representative Examination Subcommittee and the Principal Examination Subcommittee. The Subcommittees are composed of individuals with extensive experience in the securities industry. The committee members are employed by securities firms and bank dealers and come from diverse geographic locations.

[2] As discussed in section IV below, copies of the proposed revised Study Outline are available for inspection and copying in the Public Reference Room at the Commission's home office in Washington, DC.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

Dated: July 10, 1989.

[FR Doc. 89-16970 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27035; SR-NYSE-88-19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Accelerated Approval of Amendments No. 1 and No. 2 of Proposed Rule Change Relating to the Shareholder Approval Policy.

I. Introduction and Background

The New York Stock Exchange, Inc. ("NYSE or "Exchange") submitted on July 13, 1988,[1] copies of a proposed rule change, and on December 8, 1988 and June 23, 1989, copies of amendments to that proposal,[2] pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[3] and Rule 19b-4 thereunder,[4] to modify the Exchange's shareholder approval policy for domestic companies, as set forth in § 312.00 of the NYSE Listed Company Manual. The proposal will continue to require shareholder approval as a prerequisite to listing securities to be issued in certain circumstances as set forth in the policy, but will revise the circumstances triggering the shareholder vote requirement, and provide definitions and exceptions to the policy.

The NYSE's proposal to amend its shareholder approval policy was the result of the Exchange's review, begun in 1984, of its voting rights policies. In June 1984, the Exchange formed the Subcommittee on Shareholder Participation and Qualitative Listing Standards ("Subcommittee") to consider the continued relevance and appropriateness of the Exchange's voting rights policies which included the so-called one share, one vote[5] and shareholder approval policies.[6]

Currently, Paragraph 312 of the NYSE Listed Company Manual requires prior shareholder approval as a pre-requisite to the listing of securities issued in connection with certain transactions. These transaction relate primarily to issuances of common stock or securities convertible into common stock[7] in connection with: (a) Options granted to or special remuneration plans for directors, officers and key employees; (b) actions resulting in a change of control; (c) transactions involving the acquisition of property from directors, officers and substantial security holders; (d) transactions involving the issuance of 18½% or more of the outstanding common shares for acquisitions of a business, company or other assets or property;[8] and (e) transactions where the present or potential issuance of common stock and any other consideration has a combined fair value of 18½% or more of the market value of the outstanding common shares.[9]

Pursuant to its review, the Subcommittee noted that certain provisions of the current shareholder approval policy have proven difficult for the Exchange staff to apply. In addition, the Exchange noted that the Subcommittee was unable to find any conceptual basis for selecting 18½% as the standard, rather than some other figure, with respect to the issuance of stock in acquisitions.[10]

Pursuant to its review, the Subcommittee submitted its initial recommendations to the NYSE's Legal Advisory Committee ("LAC"). After review by the LAC, the Subcommittee's recommendations were returned for further modification and revision. Subsequently, the Subcommittee's final recommended modifications to the Exchange's current shareholder approval policy received the concurrence of the LAC.

The Subcommittee recommended that the Exchange retain its present shareholder approval policy with certain modifications which, according to the NYSE, were designed to simplify the Exchange's administration of the policy and conform it to more realistic standards.[11]

II. Description of the Proposal

The NYSE proposes to amend its shareholder approval policy set forth in § 312.00 of its Listed Company Manual in several ways. First, the rule proposal would identify those situations where a shareholder vote is needed for the issuance of securities in connection with the acquisition of property from directors, officers or substantial security holders or any company or party in which such persons have a direct or indirect interest. Under the proposal, shareholder approval would not be required for the issuance of securities in connection with the acquisition of property from directors, officers or shareholders who hold less than 5% of the outstanding shares of the company or less than 5% of the company's voting power, or to an acquisition of an entity or property in which directors, officers and 5% shareholders of the listed company had interests aggregating less than 5%. Further, shareholder approval would not be required if the issuances of securities in connection with the acquisition of property from an officer, director or substantial security holder represents less than 1% of the number of shares or voting power outstanding prior to the issuance.

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[3] 17 CFR 200.30-3(a)(12) (1986).

[1] This filing was published for comment in Securities Exchange Act Release No. 25944 (July 26, 1988), 53 FR 28930 (August 1, 1988). The Commission received four written comments along with a written response by the NYSE to these comments as discussed below.

[2] The December 8, 1988 and June 23, 1989 Amendments (respectively, Amendment No. 1 and Amendment No. 2), which were approved by the Exchange's Board on July 6, 1989, were published for comment in Securities Exchange Act Release No. 26959 (June 23, 1989), 54 FR 27259 (June 28, 1989), the text of which are discussed below. *See* notes 12 and 13 *infra* and accompanying text. No comments were received on these amendments. The NYSE has also requested that the changes proposed in Amendment No. 2 be approved on an accelerated basis. *See* letter from Daniel P. Odell, Assistant Secretary, NYSE to Sharon Lawson, Special Counsel, Division of Market Regulation, dated July 11, 1989.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b-4 (1989).

[5] *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376 in which the Commission adopted Rule 19c-4 under the Act, an anti-disinfranchisement rule that applies to all national securities exchanges and associations.

[6] At that time, the Exchange declared a moratorium on compliance with its one share, one vote rule and its shareholder approval policy for the period necessary to complete a review of these rules. The NYSE believed that it would not be able to provide its listed companies any real guidance on how their proposed transactions would be viewed until the Exchange completed its review of its voting rights policies and modified such policies.

[7] This would not include issuances solely involving a public offering for cash.

[8] The term "acquisitions" has been interpreted by the NYSE to include, among other things, issuances of securities for cash.

[9] Both the American Stock Exchange, Inc. ("Amex") and the National Association of Securities Dealers ("NASD") have similar provisions. The Amex's shareholders' approval policy requires shareholder approval for, among other things, approval of applications to list additional shares issued in connection with an acquisition where the present or potential issuance could result in an increase in outstanding common shares of 20% or more. *See* Amex Company Guide Section 712. The Amex has filed a proposed rule change with the Commission to amend certain provisions of this policy. *See* SR-Amex-88-26. The NASD has a similar requirement, but applies a 25% threshold standard rather than 20% and additionally requires shareholder approval for actions resulting in a change in control of the issuer. *See* Part III, section 5(i)(1) of Schedule D of the NASD By-Laws.

[10] Several years ago, the standard with respect to issuances of stock in acquisitions was "approximately 20%." Overtime, the Exchange staff increasingly interpreted this standard as meaning 18½%, with the result that this figure became a fixed standard.

[11] As initially proposed, the modified policy also received concurrence for the Exchange's Listed Company Advisory Committee and American Society of Corporate Secretaries. On July 7, 1988, the Board of Directors of the Exchange approved the proposed policy modifications.

Second, the threshold amount for requiring shareholder approval for certain issuances of common stock in connection with acquisitions would be increased from the current 18½% standard to 20%. The Exchange originally proposed to raise this standard to 25%, but reduced it to 20% in Amendment No. 2 to the proposed rule change. The proposal also would amend the rule to apply to total voting power [12] in addition to the stock outstanding at the time of the issuance and to specifically exclude public offerings for cash. Accordingly, any such issuances of securities, other than a public offering for cash, would require shareholder approval if the securities issued represented 20% or more of the outstanding voting power or shares outstanding prior to the issuance.

Third, the proposal would eliminate the requirement for shareholder approval of transactions involving a combination of the issuance of common stock *and* any other consideration which has a fair value of 18½% or more of the market value of the outstanding common shares and the common share portion represents a market value in excess of 5% of the market value of the common shares.

Fourth, the policy requires shareholder approval prior to listing securities issued pursuant to options and special renumeration plans [13] for directors, officers and key employees. The proposal would delete key employees from this provision.

Finally, the Exchange proposes to grant financial distress exceptions to § 312.03(c), which is the provision requiring shareholder approval for any issuance of common stock, other than a public offering for cash, where the issuance is equal to 20% or more of the outstanding common stock or voting power. Under the proposal the financial distress exception would be available if: (a) Delaying the issuance in order to obtain shareholder approval would jeopardize the company's existence; (b) the company's audit committee approved the waiver; and (c) appropriate notice of such action is sent to all shareholders of the company at least 10 days prior to the issuance.

[12] The Exchange proposes to define "voting power outstanding" as the aggregate number of votes which may be cast by holders of those securities outstanding which entitles the holders thereof to vote generally on all matters submitted to the company's security holders for a vote. *See* NYSE Amendment No. 2, at 3.

[13] *See* NYSE Amendment No. 1, and text accompanying note 15, *infra*. As initially proposed this provision required shareholder approval prior to the adoption of such a plan.

The proposed rule change as originally filed with the Commission, would "grandfather" those companies which had issued shares in violation of the current policy during the period in which the Exchange's voting rights policies were under review by the Committee. In Amendment No. 2 the NYSE has proposed to extend this grandfather period through the filing of this Amendment. The Exchange stated that the decision to grandfather companies in this manner is consistent with the position taken by the Exchange regarding those companies which had violated the Exchange's one share, one vote policy while that policy was under review by the Committee.

The NYSE also had proposed that the requirement of a shareholder vote for the issuance of securities resulting in a change in control be deleted. In Amendment No. 2 to the proposed rule change, the Exchange reinstated this requirement.

III. Summary of Comments

Four comment letters were received regarding the NYSE proposal.[14] Two of the commentators focused their discussion solely on a proposed amendment to subsection (1) of § 312.00 which would have required shareholder approval of options and special remuneration plans for directors or officer prior to the adoption of the plan. These commentators expressed concerns that the proposed rule would effectively change the long established practice under the existing rule of permitting NYSE listed companies to adopt such a plan prior to shareholder approval, as long as no securities are actually issued under the plan until after shareholder approval is received.[15] In response to this comment, the NYSE amended its proposed rule change to clarify that approval need be secured only prior to the issuance of securites under the plan.

[14] All of these comment letters were submitted to the Commission in response to the Exchange's initial proposal. No comments were received regarding NYSE Amendment No. 1 or NYSE Amendment No. 2. *See* letters from Joseph E. Bachelder, Esq. ("Bachelder") to Jonathan G. Katz, Secretary, SEC, dated September 27, 1988; Philip L. Ball, Esq. ("Ball") to Jonathan G. Katz, Secretary, SEC, dated August 19, 1988; Frank M. Macoice, Jr., First Vice President and Assistant General Counsel, Merrill Lynch ("Merrill Lynch") to Jonathan G. Katz, Secretary, SEC dated August 30, 1988; and Sullivan & Cromwell ("Sullivan & Cromwell" to Jonathan G. Katz, Secretary, SEC, dated August 22, 1988. The NYSE formally responded to these comment letters. *See* Letter from David Domijan, Senior Vice President, New Listings & Corporate Liaison, NYSE to Howard L. Kramer, Esq., Assistant Director, SEC, dated November 28, 1988 ("NYSE Response").

[15] *See* Bachelder letter; Merrill Lynch letter.

Sullivan & Cromwell generally supported the NYSE's proposed changes to § 312.00, but made two suggestions regarding language additions to the propsed rule. First, it was suggested that the word "related" be added to the phrase "any transaction or series of transactions" as that phrase is used in § 312.00(c) as proposed. Sullivan & Cromwell believed that this would eliminate some of the subjectivity of determining what constitutes a series of transactions.[16] The NYSE incorporated this recommendation in Amendment No. 1. Second, Sullivan & Cromwell addressed the provision which states that shareholder approval may not be required for issuances to a person not previously employed by the company if the securities are issued as an inducement essential to entering into an employment contract. They suggested that the proposal more specifically indicate that shareholder approval "is not" required rather than "may not be" required in such a case, and that the requirement that the issuances of securities must be an "essential" inducement to employment be eliminated from the policy. Sullivan & Cromwell believed that as proposed this provision would be subject to considerable subjective interpretation which could be eliminated by amending the proposed language as described above.[17] In response to this comment, the Exchange stated that the text relating to the granting of options as an inducement to employment reflects the Exchange's current and consistent practice, as set forth in § 703.09(A) of the NYSE Listed Company Manual. Accordingly, the Exchange did not amend this section as suggested by the commentator.

Finally, one commentator recommended four changes to the proposed rule change. Mr. Ball suggested that the proposed rule provide for the following: (1) A 1% exception from § 312.03(a) for granting of options to meet a "raid" on a company's personnel or otherwise retain personnel; (2) that the 20% threshold test (originally proposed as 25%) be measured on a fully-diluted common stock basis to reflect more accurately the impact on shareholders of such issuances; (3) that stock dividends and stock splits should be excluded from § 312.03(c) regarding the issuance of 20% (25%) or more of outstanding shares or voting power in any transactions or series of transactions; and (4) that the Paragraph 312.05 defintion of the minimum vote

[16] *See* Sullivan & Cromwell.

[17] *SEe* NYSE response, *supra* note 14.

necessary to constitute shareholder approval should distinguish between votes actually present and cast at an anual meeting versus the use of consents in lieu of convening an annual meeting and that abstentions should not affect the minimum vote required for quorum purposes.[18]

IV. Discussion

The Commission carefully has reviewed the NYSE's filing, as amended, as well as the comment letters submitted with respect to the proposal, to determine whether the proposed modifications to § 312.00 are consistent with the Act. The Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act which, among other things, requires Exchange rules to "remove impediments to and perfect the mechanism of a free and open market and in general to protect investors and the public interest."

The NYSE traditionally has required certain minimum standards of corporate governance for its listed companies. The NYSE, in adopting the proposed rule change, has reiterated its belief that approval of certain significant corporate transactions is an important aspect of its corporate governance listing standards. It has proposed the changes contained in SR–NYSE–88–19 in order to improve the application of the policy. For reasons discussed below, the Commission believes that the proposed rule change achieves this objective without vitiating the underlying purpose of the Shareholder Approval Policy.

First, the Commission notes that several of the proposed modifications will enhance the objectivity of the application of the policy to specific transactions. By deleting the term "key employee" from § 312.03(a) the Exchange will eliminate the uncertainty of determining who properly would be characterized as such an employee for purposes of this provision.[19] Moreover, the proposed modification to § 312.03(b) will establish an objective standard in determining who is a "substantial security holder" and whether an officer, director or substantial security holder has a substantial interest in property for purposes of requiring shareholder approval for an acquisition of property from such a person.

Second, the Commission believes that the NYSE's determination not to require shareholder approval for insignificant or deminimus acquisitions, *i.e.*, involving issuances of less than 1% of the outstanding common stock or voting power, from officers, directors and substantial security holders is reasonable. This change will enable companies to enter into such limited transactions without the burden of allowing for the time to call a shareholders meeting and for solicitation of proxies. The Commission notes that it is reasonable for the NYSE to have determined that the burden upon issuers in such a situation may outweigh the benefits to be gained by requiring shareholder participation in such minor transactions. Similarly, by expressly amending the rule to take into account the "voting power outstanding" in addition to the number of shares outstanding when determining when a shareholder vote is needed for various issuances[20] the rule will focus more specifically on the actual effect of an issuance on shareholders. This is particularly true for companies with dual class capital structures, where the classes have different voting rights.

Third, the Commission believes that the exemption from shareholder approval for financially troubled companies is an appropriate and limited adjustment to the application of the policy. We note that the exemption is only available where the time necessary to obtain approval would jeopardize the continued existence of the company, and where the company's independent audit committee[21] has approved the waiver.

Fourth, the Commission believes that retention of the policy's requirement for shareholder approval of actions resulting in a change of control,[22] will provide the Exchange with the flexibility and discretion necessary in ascertaining whether shareholder approval is appropriate with regard to a particular issuance of less than 20% of the common stock or voting power of the issuer. In this regard, the Commission notes that depending on the facts of the particular transaction, such an issuance may be sufficient in some situations to accomplish such a change in control.[23] Although the Exchange originally intended the proposed rule change to remove subjectivety from its application of the policy, the Exchange did not intend to alter the Policy's purpose of ensuring shareholder ratification of significant issuances of securities. Clearly, an issuance resulting in a change of control is significant. Accordingly, its retention is important to the effectiveness of the policy, although it is less "objective" than the other provisions of the Policy as amended.

Fifth, the Commission recognizes that the proposed rule will permit some transactions without shareholder approval that would not be permitted by the current policy as a result of increasing the 18½% threshold standard to 20%, and eliminating the requirement for shareholder approval of tranactions involving the issuance of common stock in combination with any other consideration which has a specific fair value of 18½% or more of the market value of the outstanding stock. The Commission, however, believes that the increase of 18½% to 20% represents a *de minimis* change to this provision. Moreover, as noted above, the policy's change of control provision will afford the Exchange the flexibility to analyze the facts and circumstances of a

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[18] The NYSE did not believe that any changes recommended by Mr. Ball were appropriate. With respect to Mr. Ball's first comment, the NYSE stated that during the course of the Committee's review of the Exchange's shareholder approval policy, the only de minimis exception deemed appropriate related to transactions with officers and directors as set forth in proposed 312.03(b). In regard to the second issue raised, the NYSE stated that there is no reason to change the manner in which it traditionally has applied the outstanding common share threshold. In response to Mr. Ball's third point, the NYSE noted that the policy does notapply to stock dividends and stock splits because they are distributions rather than transactions. Finally, the NYSE responded to Mr. Ball's last comment by stating that the appropriate standard for determining the minimum vote necessary to constitute approval is, and should remain, based on votes cast.

[19] *See* text accompany note 13, *supra*.

[20] For example, the policy would now require shareholder approval for transactions involving issuances of common stock representing 20% or more of the outstanding voting power of the common stock prior to the issuance in addition to issuances of 20% or more of the number of shares of common stock outstanding prior to the issuance.

[21] The NYSE requires companies to establish and maintain an audit committee comprised solely of directors independent of management and free from any relationship that, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment as a Committee member. *See* Paragraph 303.00 of the NYSE Listed Company Manual.

[22] As intially proposed, the rule change eliminated the change of control provision from the policy. The Exchange, however, determined to retain this provision.

[23] We note that in proposing to eliminate the change of control standard, the NYSE stated that there is a widely held belief that the ownership of 20% or more of the outstanding common shares or voting power in a widely held company in most instances constitutes control. Accordingly, the NYSE had concluded that the specific threshold standard in the rule for shareholder approval should encompass most change of control situations. The decision to retain the change of control standard recognizes, however, that in some situations issuances of less than 20% (25%, as originally proposed) may also constitute a change of control that should require shareholder approval. Accordingly, the Commission believes it is appropriate for the NYSE to retain its change of control standard, because the specific threshold percentage may not, as NYSE originally envisioned, encompass all change of control situations.

particular transaction to determine if shareholder approval is appropriate as a result of a change of control, even though the tranaction may fall below the 20% standard. The deletion of the fair value provision removes the difficult and subjective determination as to the value of the "other consideration." In addition, this deletion properly limits NYSE shareholder vote requirements to situations where the issuance of securities is central to the transaction in question.

As noted above, the NYSE proposes to provide grandfathered status for all companies which had issued shares in violation of the current shareholder approval policy during the period that the Exchange conducted its review of this policy, and extended through the filing of Amendment No. 2. While the Commission is concerned about those shareholders who were deprived of their right, pursuant to § 312.00, to vote on certain important corporate decisions, the Commission believes that it is not inconsistent with the Act to grandfather companies as proposed by the NYSE. In arriving at this decision, the Commission has taken into account the fact that these companies entered into otherwise violative transactions at a time when the Exchange had declared a moratorium on the application and enforcement of its shareholder approval policy.[24] The Commission is sensitive to the fact that the Exchange was not able to provide these companies with effective guidance on how their proposed transactions would be viewed once the Exchange completed its review of its shareholder approval policy and modified that policy.[25]

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of Amendments No. 1 and No. 2 in the Federal Register in that the proposed modifications to the Exchange's shareholder approval policy previously were noticed[26] and the subsequent amendments to the initial filing were either nonsubstantive clarifying changes or reflect changes that make the shareholder approval policy closer in substance to the standards set forth in the existing policy rather than make additional changes to the proposed modified policy. Moreover, the Commission has not received any comments regarding the proposed amendments.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2)[27] of the Act, that the above mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jonathan G. Katz,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89-16971 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27032; File No. SR-PHLX-89-42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Floor Employee Termination Notices

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on June 30, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Commission Rule 19b-4, the Exchange hereby proposes to adopt a Floor Procedure Advice in accordance with Phlx Rule 970 governing the filing of Floor Employee Termination Notices with a representative of the Exchange. The following constitutes all new text:

Filing Floor Employee Termination Notices with the Exchange

Promptly following the termination of any employee of a member for whom the Exchange has issued an Identification Card and Trading Badge, the member firm employer must submit to the Exchange's Director of Regulatory Services a completed "Termination Notice" and should submit the Identification Card and Trading Badge issued in the person's name.

1st Occurence: Official Warning.

2nd Occurence: $100.

3rd Occurence: $200.

4th and thereafter: Sanctions are discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide an effective means for the Exchange to implement a card key access/security system to control admission to its trading floors. The proposed Floor Procedure Advice will also assist the Exchange in keeping track of active floor members and clerical employees while controlling unauthorized access to its trading floors by removing access codes for terminated floor personnel from the security system.

The proposed rule change is based on section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and to protect investors and the public interest.

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[24] The reasons for the moratorium are discussed in Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376. The Commission views the moratorium as a unique circumstance without any precedential value for future Exchange actions regarding enforcement of its rules.

[25] As noted above, the Commission previously has grandfathered companies that issued stock in violation of the NYSE's one share, one vote policy during its moratorium. *See* Section II and note 24, *supra*. The Commission can find no justification for treating those companies that violated the NYSE shareholder approval policy during this moratorium any differently.

[26] *See* notice of proposed rule change, *supra* note 1. We note that the notice on the original proposal was issued more than 30 days ago.

[27] 15 U.S.C. 78s(b)(2) (1982).

[28] 15 CFR 200.30-3(a)(12) (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fith Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to the file number in the caption above and should be submitted by August 10, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 13, 1989.

[FR Doc. 89-16972 Filed 7-19-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27036; File No. SR-NASD-89-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definition of Direct Participation Programs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 17, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would exclude from the definition of "direct participation programs" in Part II, section 2(d)(ii) of Schedule C to the NASD By-Laws those programs that are quoted on the NASDAQ System or listed on a registered national securities exchange or for which an application for quotation or listing has been made.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD has become concerned about the scope of the present definition of direct participation program ("DPP") in Part II, section 2(d)(ii) of Schedule C to the By-Laws with respect to the types of securities in which Direct Participation Programs—Limited Principals and Limited Representatives are qualified to transact business. These categories of registration originally were established for those member firms and their associated persons who participated in the distribution of securities, usually interests in limited partnerships, that provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution. One of the distinguishing characteristics of the DPP vehicle had been its illiquidity relative to other investments and, for this reason, the DPP limited representative and principal qualifications examinations have not included questions on the distribution of liquid securities, secondary trading in the securities markets, and related market regulation.

In recent years, freely tradeable limited partnerships, such as master limited partnerships, have emerged as a significant portion of the DPP segment of the securities industry. Technically, freely tradeable partnership securities are encompassed by the current definition of a direct participation program in section 2(d)(ii) to Part II of Schedule C. The NASD believes that, in cases where limited partnership securities are or will be quoted in the NASDAQ System or listed on a registered national securities exchange, the freely tradeable feature of the limited partnership interests requires a substantial body of additional knowledge, including the operation of secondary securities markets, customer account and margin requirements, and trading-related regulation, which is not covered by the current DPP qualifications examinations. Therefore, the NASD believes that such freely tradeable partnership interests should not be included in the definition of the direct participation program in Schedule C, as such securities more closely resemble other equity products that are publicly traded in the secondary securities markets. As a result of this proposed rule change, persons who are currently qualified only as Direct Participation Programs—Limited Principals and Limited Representatives, will be required to take an additional examination in order to sell those freely tradeable limited partnership securities that are being excluded from the definition of direct participation programs.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Act, which section provides that the NASD may prescribe standards of training, experience, and competence for persons seeking to associate with a registered broker-dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

As orginally published in Notice to Members 89–24, the proposed amendment would have excluded from the definition of "direct participation program" both programs that *are* quoted on the NASDAQ System or listed on a registered national securities exchange and those that "*will be* quoted * * * or *will be* listed * * * within a reasonable period following the formation of the program." (emphasis added) The NASD received five (5) comment letters in response to this Notice. Three of the five commentators objected to the exclusion of programs that "*will be*" quoted or listed within a reasonable time following formation. These commentators expressed concern that the "reasonable period" language is too vague and could be construed to prevent the participation of a direct participation programs representative in any program that might at some future time become quoted or listed. In response to these commentators, the NASD has modified the proposed amendment to exclude only those programs that are quoted or listed or for which an application for quotation or listing has been made.

Another commentator noted that individuals who are registered as corporate securities representatives would continue to be permitted to sell freely-tradeable direct participation programs. While the corporate sucurities examination addresses the trading characteristics of these securities, it does not address the structure and operation of the programs themselves. In response to this comment, the NASD intends to incorporate material pertaining to the structure and operation of the programs into the corporate securities examination.

The fifth commentator objected to the exclusion of limited representatives and principals from secondary trading in direct participation programs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commissin and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 10, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89–17052 Filed 7–19–89; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Dillard Department Stores, Inc., Class A Common Stock, No Par Value) File No. 1–6140)

July 11, 1989.

Dillard Department Stores, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's Common Stock is also listed on the New York Stock Exchange, Inc. ("NYSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its Class A Common Stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Class A Common Stock on the NYSE and AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Class A Common Stock.

Any interested person may, on or before August 1, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–16973 Filed 7–19–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 179; Public Notice 116]

Under Secretary of State for Management; Delegation of Authority

By virtue of the authority vested in me as Acting Secretary of State, including section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), I hereby delegate to the Under Secretary of State for Management the functions vested in the Secretary of State under section 9 of the U.N. Participation Act of 1945 (122 U.S.C. 298e–1) as amended by section 304(b) of Pub. L. 100–459 (102 Stat. 2207).

Notwithstanding any provisions of this delegation of authority, the Secretary of State may at any one time exercise the functions herein delegated.

This delegation of authority supersedes any prior delegation on this subject to the extent such delegation may be inconsistent herewith.

Date: July 8, 1989.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 89-17006 Filed 7-19-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Announcement of Public Forums on Intercity Freight Transportation and International Transportation Issues; Development of a National Transportation Policy

AGENCY: Office of the Secretary, DOT.

ACTION: Public forums announcement.

SUMMARY: This notice announces a series of eight public forums on intercity freight and international transportation issues to be held in various locations around the country. These meetings are a key component of the information gathering process leading to development of a national transportation policy. All interested parties, whether representing an organization of themselves, are invited to participate in these public forums. Oral statements will be limited to 5 to 10 minutes per individuals dependent upon the numbers that appear to testify; written statements or comments will be accepted. Notification of your intent to participate should be received by the Chairman of the Intercity Freight Transportation Cluster Group and International Cluster Group as soon as possible.

DATES: Public forums on intercity freight transportation issues are scheduled from 9:00 a.m. to 4:00 p.m. on the following dates:

Intercity Freight

- July 26, 1989—Baltimore, Maryland.
- August 1, 1989—Denver, Colorado.
- Autust 2, 1989—Los Angeles, California.
- August 3, 1989—Cleveland, Ohio.
- August 10, 1989—New Orleans, Louisiana.

International

- July 27, 1989—Baltimore, Maryland.
- August 3, 1989—Los Angeles, California.
- August 11, 1989—New Orleans, Louisiana.

ADDRESSES: The public forums will be held in the following locations:

- World Trade Center, Constellation Room, 401 E. Pratt Street, Baltimore, Maryland.
- FHWA Regional Headquarters, 3rd Floor Conference Room, 955 Zang Street, Lakewood, Colorado.
- Viscount Hotel, California Ballroom, 9750 Airport Blvd., Los Angeles, California.
- Marine Safety Office, Conference Room, 1055 East 9th Street, Cleveland, Ohio.
- Sheraton New Orleans, Pontchatrain Room, 500 Canal Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Those seeking further information or wishing to participate in a public forum should contact:

Mr. William J. Watt, Chairman, Intercity Freight Transportation Cluster Group, Room 800A, RRP 1, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0173.

Mr. Arnold L. Levine, Chairman, International Transportation Cluster Group, Room 10300, P 20, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-6438.

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century.

In order to stimulate a discussion of issues, problems and solutions from a multimodal prospective, development of the National Transportation Policy will be organized largely by transportation market needs, with senior Departmental staff conducting analyses based on information and opinions from a variety of sources. The transportation market "clusters" to be examined will include:

- Urban/surburban transportation systems and services.
- Rural America transportation systems and services.
- Intercity freight: domestic transportation systems and services.
- Intercity passenger: domestic transportation systems and services.
- International transportation systems and services, and
- Innovation and human factors in transportation.

Concurrent with these market segment analyses, a series of seminars will be held to examine cross-cutting issues having broad implications for the development of a national transportation policy. Preliminary plans call for seminars addressing special needs of the transportation disadvantaged, transportation and energy, national security transportation needs, environmental considerations in achieving national transportation goals, and transportation's role in economic growth.

A key component of this policy development process will be to reach the transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress for their views on issues, problems, and recommended solutions. In addition to public forums, this outreach effort will involve solicitation of written comments from the public (see **Federal Register** Notice * published July 3, 1989), meeting with key transportation and other organizations, site visits, and other events to obtain the views of concerned parties and individuals and to build a consensus for a national policy.

William J. Watt,

Chairman, Intercity Freight Transportation Cluster.

Issued at Washington, DC.

Date: July 14, 1989.

[FR Doc. 89-11654 Filed 7-14-89; 3:45 pm]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Guilford County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Guilford County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 790-2856.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an Environmental Impact Statement (EIS) on a proposed Greensboro Road/High Point Road (U.S. 29A/70A) Improvement and/or Jamestown Bypass. The proposed action would be a multi-lane, at-grade facility, with partial access control, potentially on new location. The proposed project would begin just west of the Greensboro Road (U.S. 29A/70A)/ proposed U.S. 311 interchange in the

* 54 FR 27970

City of High Point, possibly bypassing the Town of Jamestown to the south, continuing northeast to Hilltop Road within the City of Greensboro corporate limits for a distance of about 8 miles. The proposed facility can provide a bypass for the Town of Jamestown while also relieving congestion for the existing High Point-Jamestown-Greensboro corridor travel.

Alternatives under consideration include: (1) The "no-build", (2) improve existing facilities, (3) construction an at-grade, partial control of access, multi-lane highway on new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings and meetings with local officials and neighborhood groups will be held in the study area. The first public meeting will be held in August, 1989. A public hearing will also be held. Public notice will be given on the time and place of the public meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Robert L. Lee,

District Engineer, Raleigh, North Carolina.

[FR Doc. 89-17007 Filed 7-19-89; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Flathead County, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway in Flathead County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental and Project Development Engineer, Federal Highway Administration, 301 South Park Street, Drawer 10056, Helena, Montana 59626, Telephone: (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone (406) 444-6242.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Montana Department of Highways will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 2 (U.S. 2) in Flathead County, Montana. The proposed improvement would involve the reconstruction of the existing U.S. 2 from the junction of Federal Aid Secondary Route 206 (FAS 206), east of Columbia Falls to the west edge of Hungry Horse, a distance of 4.4 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Also, included in this proposal is the widening or replacement of the existing bridge over the South Fork of the Flathead River, at the east end of the proposed project, and the reconstruction of the U.S. 2/FAS 206 intersection.

Alternatives under consideration include (1) taking no action; (2) widening the existing two-lane highway to four lanes; and (3) replacing the existing facility with a "special design" two-lane highway. Incorporated into and studies with the various build alternatives will be design variations of roadway width, grade, and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and Local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of formal scoping meetings will be held in the Columbia Falls area between August and October, 1989. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 14, 1989.

D.C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 89-17046 Filed 7-19-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Grant Availability to the States for Projects Implementing School Bus Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of a grant program.

SUMMARY: NHTSA intends to make funds available during fiscal year 1990 to assist the States in implementing school bus safety measures. Funding will be set aside from the "Section 402" program, and each State will be eligible for a proportionate share of that funding. To participate in this grant program, a State must submit an application to NHTSA which proposes to expend the funds on one or more of the measures designated by NHTSA to be "effective" or "most effective" in improving school bus safety. This notice solicits applications from the States that are interested in developing and implementing projects under this program.

DATES: Applications must be received by November 1, 1989.

ADDRESSES: A State must submit its application to the NHTSA Regional Administrator serving the Region in which the submitting State is located. All applications submitted should be labeled "School Bus Safety Implementation Project." Interested States are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: States should direct all questions concerning the grant program and applications to the NHTSA Regional Administrator having responsibilities for the applicant State. More general inquiries on school bus safety may be directed to Ron Engle, Traffic Safety Programs (NTS-23), National Highway

Traffic Safety Administration, Room 5125, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2717.

SUPPLEMENTARY INFORMATION:

Background

Section 204 of the Highway Safety Act of 1987 (Pub. L. 100–17, Title II) authorized the National Academy of Sciences (NAS) to conduct a comprehensive study on school bus safety. The NAS issued its report, entitled "Improving School Bus Safety" (Special Report No. 222), in May 1989. This report confirmed the high degree of safety provided by America's school bus fleet, especially those buses built after several Federal safety standards took effect on April 1, 1977. The report also listed those safety measures most effective in protecting the safety of school children while boarding, leaving, and riding in school buses.

As required by the Act, NHTSA has reviewed the NAS study and has recently published a companion notice in the Federal Register (54 FR 29629, July 13, 1989, Notice entitled "School Bus Safety Measures," issued July 7, 1989) listing the measures determined to be the most effective in protecting the safety of school-bused children. The list has been divided into two categories: (1) Those measures considered to be "most effective," and (2) those measures considered to be "effective."

Section 204 of the Act also permits NHTSA to set aside an amount not to exceed $5,000,000 out of monies available under 23 U.S.C. 402 in each of Fiscal Years 1990 and 1991 for the purpose of making grants to the States to implement school bus safety measures listed in the earlier notice. This notice announces the agency's intention to establish such a grant program available to all States in FY 1990. The set-aside will be reflected in the agency's apportionment of Section 402 funds and distribution of obligation limitations, which are normally issued at the start of the new fiscal year (October 1, 1989). In determining the exact amount of this set-aside, NHTSA will take into account the total level of Section 402 funding made available by Congress for FY 1990.

In taking this action, the agency does note its reservations about the establishment of such programs. As a general rule, NHTSA opposes efforts to "earmark" or "set-aside" funds from the Section 402 program. Those practices interfere with State decisions on how to use those funds most effectively (i.e., to obtain the greatest possible improvement in highway safety). While this set-aside program should help to improve school bus safety, it may divert funding away from other highway safety projects which have greater potential safety benefits.

But NHTSA also shares the special concerns of the Congress and others in enhancing safe transportation for school children, even though the current safety record is already quite positive. The recent public focus on school bus issues may also make this an opportune time for some added emphasis on these safety programs. Accordingly, in line with the 1987 Act and the recent NAS report, NHTSA does intend to implement this short-term set-aside program. However, the agency wishes to state that it will continue to oppose the enactment of new set-asides or earmarks in the Section 402 program.

Objectives

The NAS report made a number of recommendations on ways to enhance and improve the safety of school children while boarding, leaving and riding in school buses and walking to and from school. NHTSA has evaluated these safety measures and agrees that all have the potential for reducing the risk of death and injury to school children. The Agency's evaluation appears in the Federal Register Notice listing the most effective measures. In addition to those measures identified in the NAS report, NHTSA has included riding bicycles to and from school as a component of pedestrian safety education.

This grant program emphasizes those measures which NHTSA has determined to be the "most effective" in protecting the safety of school children, but retains sufficient flexibility for the particular needs of each State. All States are given an equal opportunity to participate in this grant program. Each State should determine which safety measures from the "most effective" or "effective" listings would best address its own problems.

The NAS recommended that school buses manufactured prior to the implementation of the April 1, 1977 school bus safety standards be replaced as rapidly as possible with those manufactured after that date. While NHTSA agrees that the replacement of these vehicles is a highly effective means of reducing risks to bus riders, it has been a longstanding policy of the Agency not to allow the use of Section 402 funds to purchase school buses. This policy is consistent with the "seed money" concept of the Highway Safety Program and with the Agency's policy directive on allowable costs, NHTSA Order 462–13A. Accordingly, funds under this grant program may not be used for bus purchases.

For the purpose of assisting the States in deciding which pupil transportation safety measures they wish to propose as grant projects, the measures have been organized into three basic categories. These are Safety Education, Program Administration and Safety Equipment Acquisition. NHTSA guidance and training materials for program development purposes are available through the Regional Administrators.

Most Effective Measures

The following is a listing of eligible "most effective" safety measure projects in each of these categories:

Safety Education

(1) School Bus Stop and Boarding Safety: Safety education initiatives that emphasize the importance of: (1) Safe walking practices to and from bus stops; (2) how and where to wait safely for the bus; and (3) how to board and leave the bus safely (including the emergency evacuation of buses).

(2) Pedestrian Safety Education: Programs that address safe walking and riding bicycles to and from school.

(3) School Bus Driver Training: Programs that monitor and upgrade bus driver skills and qualifications, including training and licensing requirements. Such programs should also address the responsibilities of the driver for the safety of children inside the bus and in loading zones.

Program Administration

(4) School Bus Routes and Stops: Programs that regularly evaluate school bus routes and stops to ensure that they represent the safest, most convenient and efficient transportation for children traveling to and from school, including programs to develop loading and unloading plans for all vehicles at school locations.

(5) Standees: Programs to evaluate current bus routing to eliminate standees from school buses.

(6) School Bus Stopping Procedures: Programs to review school bus stopping procedures and related traffic laws for effectiveness and consistency with other jurisdictions. Includes development of public information and enforcement campaigns to ensure that motorists fully understand these procedures and laws.

Safety Equipment Acquisition

(7) Stop Signal Arms: Programs to require installation of stop-signal arms on new buses and retrofit them on older buses, because of their ability to alert

other motorists. Also, programs to require their use.

(8) Outside Crossview and Rearview Mirrors: Programs to require installation of additional cross-view mirrors on new buses, and to retrofit them on older buses, consistent with Federal Motor Vehicle Safety Standard III, which allow the driver to see the area immediately in front of and along both sides of the bus.

Effective Measures

The Agency also believes that certain measures are "effective" in protecting the safety of school children while riding in buses. If a State elects to use its grant funds for one or more of these measures, it will be expected to explain why the selection of an "effective" measure is more appropriate than the choice of any of the "most effective" measures. The following is a listing of eligible "effective" safety measure projects by basic category:

Safety Education

(1) Emergency Evacuation Drills: Programs that establish or improve emergency school bus evacuation drills within school districts or States.

Program Administration

(2) School Bus Crash Data: Programs that upgrade and standardize school bus crash data. These data would be used to analyze why, where and how children are being injured and to evaluate the effectiveness of school bus safety programs and devices.

Safety Equipment Acquisition

(3) Reflective Markings: Programs that involve the installation of reflective materials to make buses more visible and reduce the risk of nighttime crashes.

(4) Other safety features and equipment: Programs that upgrade State-level requirements for school bus exits, flammability of interior materials and fuel system integrity. NHTSA has commenced rulemaking on these issues to incorporate further safety improvements in the mandatory Federal standards for new vehicles. However, in the interim, States may wish to revise their own specifications for the purchase of new buses, or the overhaul of vehicles already in the fleet.

Funding

The application for funding assistance should address what is proposed and can be accomplished during this period. A State may receive in fiscal year 1990 an amount not to exceed that percentage of the set-aside which is equal to its allotted share of FY90 Highway Safety Program funds under 23 U.S.C. 402. A State may apply for a grant equal to the full amount of its share or some lesser amount. NHTSA intends to make decisions on all grant applications within 30 days afer the application deadline. After that time, all monies which have not been obligated under grants approved by NHTSA will be released for general Section 402 purposes and distributed to all States in accordance with the apportionment formula under 23 U.S.C. 402.

Eligibility

Consistent with 23 U.S.C. 402, only the Governor's Representative for Highway Safety may make application for grants under this program.

Application Procedure

Each State must submit one original and two copies of its application to the NHTSA Regional Administrator having responsibility for such State. All applications submitted must be labeled "School Bus Safety Implementation Project." Only complete applications received on or before November 1, 1989, shall be considered. States which do not make an application for these grant funds on or before November 1, 1989, shall be deemed to have decided not to participate in this program.

Application Contents

The application package should be submitted as a part of the State's Highway Safety Plan or as an addendum to such Plan. Applications shall include a project narrative statement which addresses the following items:

(1) A discussion of school bus safety in the State in relation to the "most effective" measures and a rationale for the State's selection of its proposed projects.

(2) A description of the proposed projects for improving school bus safety.

(3) The plan of action for conducting the proposed projects, including target dates and methods for assessing the accomplishments of the projects.

(4) The anticipated results and benefits to be derived.

Evaluation Criteria and Review Process

Each application will be reviewed to assure that it contains all of the required information to determine that the project or projects adequately cover one or more of the "most effective" or "effective" measures. If an "effective" measure category is selected, the application must include a discussion of why the "effective" measure is more appropriate than any of the "most effective" measures.

All applications will be judged using the following criteria listed in descending order of importance:

(1) The applicant's careful consideration of school bus safety problems in relation to the measures determined to be "most effective" in improving school bus safety.

(2) The technical merit of the proposed grant project effort, including the feasibility of the approach, plan of action and anticipated results.

(3) The adequacy of the resources for accomplishing the proposed grant project effort.

Final Report

Each State receiving a grant under this program shall submit a final report which includes a complete description of the projects and the results. Such final report may be included as part of the State's final report on Section 402 projects for FY 1990.

Terms and Conditions of the Award

Prior to award, the State must comply with the certification requirements of 49 CFR Part 29, "Government-wide Requirements for Drug-Free Workplace," if the State has not already made such a certification for the year of the award. Any grant awarded as a result of this notice shall be subject to the applicable requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Unless otherwise stated, all procedures and requirements of the Section 402 program are applicable.

Issued on: July 14, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-17061 Filed 7-17-89; 1:38 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to discuss the issues that will be presented at the next meeting of the International

Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP).

DATE: September 29, 1989, 12:30 p.m.

ADDRESS: Room 8236, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss proposed changes to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air that will be presented to the next meeting of the DGP meeting which is scheduled to meet in Montreal, Canada from 9 to 20 October, 1989. If adopted, the changes to the Technical Instructions would become effective on January 1, 1991.

Issued in Washington, DC, on July 14, 1989.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-17035 Filed 7-19-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 19-89]

Treasury Notes, Series G-1996

Washington, July 13, 1989.

The Secretary announced on July 12, 1989, that the interest rate on the notes designated Series G-1996, described in Department Circular—Public Debt Series—No. 19-89 dated July 6, 1989, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 89-17016 Filed 7-19-89; 8:45 am]

BILLING CODE 4810-40-M

Secret Service

Senior Executive Service; Performance Review Board; Membership

ACTION: Appointment of Performance Review Board (PRB) Members.

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1988, and ending June 10, 1989. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Stephen E. Garmon—Deputy Director, U.S. Secret Service
Garry M. Jenkins—Assistant Director, Investigations (USSS)
Guy P. Caputo—Assistant Director, Protective Operations (USSS)
Jack A. Renwick—Assistant Director, Inspection (USSS)
David C. Lee—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant Director, Government Liaison & Public Affairs (USSS)
Don A. Edwards—Assistant Director, Training (USSS)
H. Terrence Samway—Deputy Assistant Director, Protective Operations (USSS)
John R. Smith—Deputy Assistant Director, Protective Operations (USSS)
Stephen J. Harrison—Deputy Assistant Director, Protective Operations (USSS)
John Magaw—Deputy Assistant Director, Protective Research (USSS)
Richard A. McCann—Deputy Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service (USSS)

FOR FURTHER INFORMATION CONTACT: Wesley Bishop, Chief, Personnel Division, Room 901, 1800 G Street, NW., Washington, DC 20223, Telephone No. 202-535-5635.

John R. Simpson,

Director.

[FR Doc. 89-17008 Filed 7-19-89; 8:45 am]

BILLING CODE 4810-42-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is requesting clearance of an internal form IAP-90 "Fact Sheet for Performing Artists Touring Privately", which is used to collect information on the availability of performing artists for appearance overseas on behalf of the United States, which has been approved previously by OMB clearance number 3116-0165. Respondents will be required to respond only one time.

DATE: August 21, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted on OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington DC 20547. Telephone (202) 485-7503, and OMB review: Mr. Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC, 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Fact Sheet for Performing Artists Touring Privately".

Form Number: IAP-90.

Abstract: Under the requirements of Pub. L. 87-256. The Mutual Educational and Cultural Exchange Act of 1961. The U.S. Information Agency tries to strengthen the understanding and respect of the United States by foreign people through the sponsorship of performing artists and groups. This is done at minimal cost to the U.S. Government by our program of selecting artists on private tours overseas to schedule performances, in countries of the U.S. Government. The purpose of these programs is to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, development, and achievements of the people of the United States, and the contributions being made toward a peaceful and more fruitful life for people throughout the world.

Proposed Frequency of Responses:

No. of Respondents—500
Recordkeeping Hours—0

Total Annual Burden—500

July 14, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89–16950 Filed 7–19–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information (1) The agency reponsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 21, 1989.

Dated: July 13, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration.

2. Request for change of Program or Place of Training.

3. VA Form 22–1995.

4. The information on this form is necessary to determine eligibility for continued educational assistance for veterans, servicepersons, and reservists who change their programs or places of training.

5. On occasion.

6. Individuals or households.

7. 130,000 responses.

8. 1/3 hour.

9. Not applicable.

[FR Doc. 89–17010 Filed 7–19–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 25, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Tuesday, July 25, 1989, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-11
Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. on behalf of Sutherland, Asbill & Brennan.
Draft Advisory Opinion 1989-12
Edward D. Feigenbaum regarding an Indiana statute that prohibits political contributions by and the awarding of contracts to certain vendors.
Regulations—Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR 110.3-110.6).
ADP Project Status Report
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer. Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-17167 Filed 7-18-89; 2:50 pm]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m.-July 25, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Service Contract Docket No. 89-13 North Europe-U.S. Atlantic Conference Correction of Clerical Errors in Service Contract S.C. No. 541/89
2. Docket No. 89-07—Inquiry Into Laws, Regulations, and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

CONTACT PERSON FOR MORE INFORMATION: Ronald D. Murphy, Assistant Secretary, (202) 523-5725.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 89-17102 Filed 7-17-89; 5:06 pm]
BILLING CODE 6730-01-M

NATIONAL LABOR RELATIONS BOARD

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: Immediately following a 9:30 a.m. case-adjudicatory meeting, Tuesday, July 18, 1989.

PLACE: Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDER: Personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington DC, July 14, 1989.
By direction of the Board.

Joseph E. Moore,
Acting Executive Secretary, National labor Relations Board.

[FR Doc. 89-17121 Filed 7-18-89; 11:06 am]
BILLING CODE 7445-01-M

POSTAL RATE COMMISSION

AGENCY HOLDING THE MEETING: Postal Rate Commission.

TIME AND DATE: 10:30 a.m., Tuesday, July 25, 1989.

PLACE: Commission Conference Room, 1333 H Street, NW., Washington, DC 20268-0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,
Secretary.

[FR Doc. 89-17140 Filed 7-18-89; 12:05 pm]
BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-021]

Cell-Site Transceivers and Related Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

Correction

In notice document 89-16133 beginning on page 29077 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29079, in the second column, in the last paragraph, in the eighth and ninth lines "[insert date 90 days prior to date of publication]" should read "April 12, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

Correction

In notice document 89-16033 beginning on page 28832 in the issue of Monday, July 10, 1989, make the following correction:

On page 28833, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line, "(212)" should read "(202)".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1340-000, et. al.]

Sabine Pipe Line Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 89-16156 beginning on page 29093 in the issue of Tuesday, July 11, 1989, make the following corrections:

On page 29093, in the first column, in the heading, the docket number was incorrect and should appear as set forth above.

On page 29094, in the third column, under **8. Panhandle Eastern Pipe Line Co.**, in the first line, the docket number should read "CP89-1686-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10690-000]

Utah Power and Light Co.; Availability of Environmental Assessment

Correction

In notice document 89-16152 appearing on page 29097 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29097, in the first column, in the fourth line, the date should read "July 5, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-12 & 15; AZA-23700]

Arizona; Realty Action; Transfer of Public Land to State of Arizona

Correction

In notice document 89-15257 beginning on page 27214, in the issue of Wednesday, June 28, 1989, make the following correction:

On page 27215, in the second column, in the second line, "NE¼" should read "NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-09-4214-10; GP9-247; OR-42920(Wash)]

Partial Termination of Proposed Withdrawal; Washington

Correction

In notice document 89-15260 beginning on page 27217 in the issue of Wednesday, June 28, 1989, make the following correction:

On page 27217, in the second column, under "Okanogan National Forest", in the third line, "southeasterly" should read "northeasterly".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

RIN 1290-AA08

Department of Labor Regulations Implementing Freedom of Information Act and Executive Order 12600

Correction

In the issue of Tuesday, June 13, 1989, on page 25204, in the third column, a correction to FR Doc. 89-12716 appeared. The sixth item was inaccurately printed and should have appeared as follows:

6. On page 23149, in the second column, § 70.40(b)(4) should appear as a paragraph.

BILLING CODE 1505-01-D

federal register

Thursday
July 20, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AA52

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: MSHA is revising two sections of its safety standards for methane in metal and nonmetal mines to conform the standards to recently issued approval requirements for brattice cloth and ventilation tubing. The methane standards currently require that those materials have a flame spread rating of 25 or less if used in underground metal and nonmetal mines with a history of, or a potential for methane liberation. The reference to flame spread rating is replaced with a requirement that brattice cloth and ventilation tubing be approved by MSHA in accordance with 30 CFR Part 7.

EFFECTIVE DATE: This final rule is effective August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Effect of Rule

A final rule updating MSHA's standards for methane in metal and nonmetal mines was published as a new Subpart T of Part 57 on July 1, 1987 (52 FR 24924). Sections 57.22215 and 57.22222 of these standards specify the use of brattice cloth and ventilation tubing with a flame spread rating of 25 or less as determined by American Society of Testing Materials (ASTM) test method E-162. Under § 57.22215, rigid ventilation tubing is required to be constructed of noncombustible material. The July 1, 1987 preamble noted that MSHA was engaged in development of an improved test method to evaluate the flame resistance of brattice cloth and ventilation tubing. The preamble further stated that upon promulgation of Part 7, §§ 57.22215 and 57.22222 would be revised to require the use of approved brattice cloth and ventilation tubing. On June 22, 1988 the new test method was issued as part of new approval regulations in 30 CFR Part 7 (53 FR 23466). MSHA published a proposed rule to revise §§ 57.22215 and 57.22222 on December 5, 1988 (53 FR 48934). No comments were received on these two sections as proposed and the final rule retains the proposed language. These revisions will become effective on August 22, 1989. As of that date, brattice cloth and ventilation tubing newly installed in a mine will be required to be approved by MSHA in accordance with 30 CFR Part 7. This delayed effective date coincides with the phase-in of new approval requirements under Part 7 and will provide sufficient time for mine operators to obtain approved ventilation materials. To the extent that ventilation materials approved under Part 7 become available sooner, they may be installed and will be considered in compliance with current §§ 57.22215 and 57.22222. Operators may also continue to install currently acceptable ventilation materials until the effective date of this rule. The approval status of those products previously tested and accepted by MSHA's Approval and Certification Center and issued an MSHA BC or VT acceptance number will remain unaffected allowing those products to be manufactured and used as MSHA approved.

II. Executive Order 12291 and the Regulatory Flexibility Act

This rule revises two previously issued standards to update technical performance requirements for brattice cloth and ventilation tubing. The cost impact of the new requirements on mine operators will be negligible. Many operators already use brattice cloth and ventilation tubing meeting the new requirements. The cost impact of the test requirements of the ventilation materials has been analyzed in the context of the Part 7 rulemaking. Accordingly, the Agency has determined that this rule will not result in a major cost increase or have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required. The Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities.

III. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 57

Mine safety and health, Metal and nonmetal mining, safety standards for methane.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: July 14, 1989.

Accordingly, Subpart T, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 57—[AMENDED]

1. The authority citation for Subpart T continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22215(b)(1) is revised to read as follows:

§ 57.22215 Separation of intake and return air (I-A, II-A, III, and V-A mines).

* * * * *

(b) * * *

(1) Ventilation tubing approved by MSHA in accordance with 30 CFR Part 7 or previously issued a BC or VT acceptance number by the MSHA Approval and Certification Center may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall not exceed 250 feet in length.

* * * * *

3. Section 57.22222 is revised to read as follows:

§ 57.22222 Ventilation materials (I-A, I-B, I-C, II-A, III, V-A, and V-B mines).

Brattice cloth and ventilation tubing shall be approved by MSHA in accordance with 30 CFR Part 7, or shall bear a BC or VT acceptance number issued by the MSHA Approval and Certification Center.

[FR Doc. 89-16966 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

Thursday
July 20, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA58

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add an exception applicable to anthracite coal mines to 30 CFR 75.206(a). This rule was promulgated on January 27, 1988. Section 75.206(a) contains requirements for the use of conventional roof support but does not address the specific mining conditions unique to anthracite mining. This section would remain in effect for mines other than anthracite mines.

DATE: Written comments must be submitted on or before September 18, 1989.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Proposed Rule

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing safety standard for roof support in underground coal mines.

On January 27, 1988 (53 FR 2354) MSHA published final rules revising its safety standards for roof, face and rib support in underground coal mines. This proposal affects § 75.206 which sets out requirements for the use of conventional roof supports. Paragraph (a) of § 75.206 addresses mines that only use conventional supports and limits the width of entries in these mines to 20 feet. In addition, this paragraph also contains standards that address the spacing and number of supports in and around roadways. After further review of these requirements and the unique ground control conditions in near vertical seams, MSHA determined that this provision is not appropriate for anthracite mines, and exempting anthracite mines would not result in a diminution of safety.

As noted in the preamble, the requirement that the width of openings be limited to 20 feet when using only conventional support was derived from previous criteria provisions (53 FR 2359). A review of the history of application of these provisions in roof control plans indicates that they have never been applied to anthracite mines. In fact, most entry widths in anthracite mines are ten feet or less and the areas where widths extend beyond 20 feet have been successfully addressed in plans on an individual basis.

Discussions in the preamble to the final rule also consistently make reference to use of roof bolts as a means to achieve compliance with the requirements of paragraph (a). For example, the preamble states that the Agency concluded that a combination of roof bolts and conventional support is necessary to support openings wider than 20 feet (53 FR 2359). Use of roof bolts would not be a practical or even safe option in most anthracite mines which contain pitching seams that preclude the use of roof bolting equipment. The requirements in the standard and discussions in the preamble also consistently make reference to roadway widths which are relevant to bituminous coal mines using conventional supports and not to anthracite mines where roadways are not used and entries are often fully supported. In addition, heavy equipment, for which roadways are necessary, is not used in anthracite mines.

The preamble to the final rule also makes reference to 71 mining sections that the Agency estimated to be mining openings greater than 20 feet in width and only using conventional supports. The text goes on to state that to continue mining, these mines would be required to use roof bolts in conjunction with conventional supports. The preamble makes no mention of the impact of this standard on anthracite mines. However, because the use of roof bolts is considered the only means of compliance with the standard it seems clear that this impact was not taken into account.

II. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would make a modification to a previously issued rule. MSHA has determined that the rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. The Agency also determined that the proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. Paperwork Reduction Act

There are no information collection requirements contained in this proposal.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Roof, face and rib support.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Therefore, Part 75, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.206(a) is revised to read as follows:

§ 75.206 Conventional roof supports.

(a) Except in anthracite mines, when conventional roof support materials are used as the only means of support—

* * * * *

[FR Doc. 89-16967 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

Thursday
July 20, 1989

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 20, 75, and 77

Electric Mine Lamps Other Than Standard Cap Lamps, Certified and Qualified Persons, and Mobile Equipment; Automatic Warning Devices; Revisions of Existing Procedures and Requirements; Final Rules

DEPARTMENT OF LABOR

30 CFR Part 20

RIN 1219-AA40

Electric Mine Lamps Other Than Standard Cap Lamps

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends 30 CFR Part 20 by revising the requirements for the testing and approval of electric mine lamps, other than standard cap lamps, used in underground mines. These amendments allow MSHA to approve lamps with different designs that are as safe as lamps approved under the existing rules. This final rule does not affect lamps which have been or could be approved under the existing rules.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 2203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Under the existing rules, MSHA investigates and approves lamps which meet the design, construction and test requirements in Part 20 of Title 30 of the Code of Federal Regulations (CFR). These rules do not recognize lamps and flashlights that incorporate new or newly-applied technology. As a result, MSHA has not approved lamps and flashlights with innovative improvements.

This final rule amends Part 20 to enable MSHA to issue approvals for electric lamps and flashlights incorporating new designs if, after testing, they are found to be safe for their intended use and provide, at a minimum, the same degree of safety as lamps currently approved under the existing rules.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12250) which would allow MSHA to approve lamps with different designs that would be as safe as lamps approved under the existing rules.

On August 11, 1988 (53 FR 30312), MSHA published a notice of public hearing which outlined the major issues raised during the comment period. A public hearing was held on August 30, 1988, in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. This final rule was developed after a full evaluation of the rulemaking record.

II. Discussion and Summary of the Final Rule

This final rule permits MSHA to approve electric lamps and flashlights that incorporate technology for which the requirements of Part 20 are not applicable if the Agency determines by testing that the electric lamps or flashlights are as safe as those that meet the requirements of Part 20. Under this provision, MSHA can modify design, construction or test requirements as necessary to investigate and approve lamps or flashlights which incorporate technological improvements that were not available or not applied when Pact 20 was originally promulgated.

One commenter suggested that the regulation specifically reference "design features" as a component of MSHA's determination that the product is as safe as others approved by MSHA. The commenter reasoned that new mine lamps should be tested for rigid construction appropriate for the mining environment and be designed to prevent easy removal of devices which are included for protection. However, the existing requirements adequately address these concerns without further reference in the final rule to design features. Existing § 20.6(a) requires that lamps are durable in construction, practical in operation, and suitable for the service for which they are designed and approved. Existing § 20.8(a)(3) requires that for lamps other than flashlights, all parts, such as the bulb housing and battery container, through which access may be had to live terminals or contacts must be adequately sealed or equipped with magnetic or other equally reliable locks to prevent opening by unauthorized persons. For flashlights, provision must be made for sealing the battery container.

Consistent with this amendment, this final rule revises § 20.8(a)(1) to allow MSHA to investigate and approve lamps that are designed and constructed to prevent bulb breakage, thus preventing exposure of the filament and possible ignition of an explosive atmosphere. Under this rule, this design is an alternative to the existing requirement for a safety device to prevent exposure of the filament. Typically, the safety device used in approved electric mine lamps ejects the bulb automatically when the lamp lens is broken. MSHA is aware of lamps currently being designed and constructed with breakage-resistant material that prevents exposure of the filament by protecting the bulb from breakage. This final rule authorizes MSHA to approve these types of lamps, provided that they are as safe as currently approved lamps. One commenter suggested that § 20.8(a)(1) include the requirement that alternative designs be constructed "of rigid material maintainable for the work environment." This requirement is addressed by design features in existing § 20.6(a). Another commenter suggested that § 20.8(a)(1) specify specific performance and test criteria. MSHA agrees and the final rule has been modified to clarify that alternative designs will be evaluated by mechanical impact tests, temperature tests and thermal shock tests. However, the final rule does not contain detailed test requirements because the specific requirements will vary according to the technology used by the applicant. Section 20.1(c)(2) of the final rule provides that MSHA determine by testing that the electric lamps or flashlights are as safe as those which meet the requirements of this part. Since it is impossible to foresee all of the possible designs that will meet this requirement, it is impossible to specify detailed test requirements.

At a future date, and under a separate rulemaking, MSHA will review Part 20 to determine the appropriateness of incorporating it into the Agency's program which allows product testing by the applicant or third party, under 30 CFR Part 7. One commenter was opposed to the concept of third party testing for products approved under Part 20. Products will only be included under Part 7 when the technical and test requirements can be specified in detail. New technology will only be evaluated by MSHA.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking does not result in major cost increases nor have an incremental effect of $100 million or more on the industry. Therefore, this final rule is not a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required. This rule removes restrictions in MSHA's Approval and Certification requirements for electric mine lamps, other than standard cap lamps. It does not include any new requirements nor result in

additional costs. For these reasons the Agency has not conducted a regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 20

Mine safety and health, Electric mine lamps.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Accordingly, Part 20, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 957.

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

1. The authority citation to Part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

2. Section 20.1 is amended by redesignating paragraph (c) as (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 20.1 Purpose.

* * * * *

(c) * * *

(2) MSHA May approve electric lamps and flashlights that incorporate technology for which the requirements of this part are not applicable if MSHA determines by testing that the electric lamps or flashlights are as safe as those which meet the requirements of this part.

* * * * *

3. Section 20.8 is amended by revising paragraph (a)(1) to read as follows:

§ 20.8 Class 1 lamps.

(a) * * *

(1) *Safety device or design.* The lighting unit shall have a safety device to prevent the ignition of explosive mixtures of methane and air if the bulb glass surrounding the filament is broken. Alternatively, if the lamp is designed and constructed of materials that will prevent the ignition of explosive mixtures of methane and air by protecting the bulb from breakage and preventing exposure of the hot filament, no separate safety device is required. Alternative designs will be evaluated by mechanical impact tests, temperature tests and thermal shock tests to determine that the protection provided is no less effective than a safety device.

* * * * *

FR Doc. 89–16963 Filed 7–19–89; 8:45 am]

BILLING CODE 4510–43–M

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30 CFR Parts 75 and 77

RIN 1219–AA36

Certified and Qualified Persons

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises certain provisions of the Mine Safety and Health Administration's (MSHA) existing procedures concerning temporary qualification and certification of persons who work at coal mines. Existing procedures limit temporary qualifications and certifications to six months, after which time reapplication must be made. This final rule permits persons to be qualified or certified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same coal mine or by the same independent contractor. This eliminates the six-month recertification requirement, thereby eliminating the unnecessary paperwork involved in the routine reapplication for certification and qualification of persons.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA requires that persons who perform certain examinations, tasks and duties related to safety and health at coal mines and involving specialized expertise be either "certified" or "qualified" to do so. This final rule primarily affects mine foremen; assistant mine foremen; and preshift examiners who must be certified or qualified to perform certain duties such as testing for methane and oxygen deficiency. Additionally, this final rule affects qualified persons who operate hoists.

The existing procedures and requirements for certified and qualified persons affected by this rulemaking are set forth in §§ 75.100, 75.155, 77.100 and 77.105 of Title 30 of the Code of Federal Regulations (CFR). These existing standards recognize state certification and qualification programs. Thus, persons certified or qualified by the State in which they work are authorized to perform the duties prescribed. However, where state programs are not available, the existing standards allow MSHA to temporarily certify or qualify miners.

To be determined qualified and certified under MSHA's existing standards, persons must initially meet certain minimum experience requirements. Depending on the applicable certification or qualification, one to two years of general employment experience at a coal mine is required. For certified and qualified persons at underground mines, six months of that experience must have been in a specific job category and that experience must have immediately preceded the filing of the application. Persons applying for temporary certification and qualification must do so in writing and must certify that the experience requirements have been satisfied. After initial certification or qualification, reapplication must be made twice a year in order for certified and qualified persons to continue to be authorized to perform their duties.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12251) to eliminate the six-month recertification requirement.

On August 11, 1988 (53 FR 30312), MSHA published notice of a public hearing which outlined the major issues raised during the comment period. A public hearing was held on August 30, 1988, in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. The final rule was developed after a full evaluation of the entire public record.

II. Discussion and Summary of Final Rule

In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining community. However, some of the comments, as discussed more fully below, were

beyond the limited scope of the proposal.

This final rule eliminates the six-month limitation and permits persons to be certified or qualified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same coal mine or by the same independent contractor. This change eliminates repetitive and unnecessary paperwork, which had no safety purpose, involved with reapplication. When employment at a particular mine or with a particular independent contractor ends, the person's certification or qualification lapses. In order to be reinstated as a certified or qualified person, reapplication must be made. Reapplication will ensure that the experience requirements for certified and qualified persons, contained in §§ 75.100(c)(1), 75.155 (a)(2) and (b)(2), 77.100(b)(2) and 77.105(a)(2), are met.

The purpose of this rulemaking, to address the six-month recertification process, was clearly stated by the Agency in the proposal and during the public hearing. Therefore, this final rule does not adopt suggestions made by commenters for other changes in the rule ranging from a restructuring of the certification and qualification procedures to allowing certifications to be valid from State-to-State.

Several commenters felt that since the final rule permits employees of independent contractors to transfer from one mine to another without having to be recertified MSHA should provide mine operators the same privilege. The final rule retains the existing requirement that miners be recertified when transferring from one mine to another. The final rule also incorporates the existing policy that employees of independent contractors are employed by the same employer regardless of their location and therefore are not required to be recertified or requalified when assigned to a new work location. Mine operators are responsible for the compliance of their employees with MSHA's standards and regulations at their specific mines. Independent contractors are also responsible for the compliance of their employees with MSHA's standards and regulations. However, the independent contractor's employees move from mine-to-mine with the contractor, making the status of the employee more determinant on the contractor than the mine site.

Under existing rule § 77.100(b)(2), persons are required to test for oxygen deficiency with a permissible flame safety lamp. Several commenters suggested that persons be allowed to test for oxygen deficiency with any device that has been approved by the Bureau of Mines, MESA, or MSHA. MSHA agrees and in keeping with advancing technology, the final rule allows persons to test for oxygen deficiency with either a permissible flame safety lamp, or any other device approved by the Secretary.

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has considered the potential costs and benefits associated with this final rule in general and as they specifically impact small entities as required by the Regulatory Flexibility Act. This final rule makes no substantive change to the requirements for certification or qualification, and MSHA has determined that the final rule is not a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. This final rule revises current reporting requirements which eliminates cumulative and burdensome paperwork concerning qualified and certified persons, and also directly benefits small as well as large coal mining operations while maintaining miner safety. For these reasons the Agency has not conducted a regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980. Under the existing requirements MSHA is receiving approximately 2,800 applications from mine operators annually. The cost of the government is approximately $4,160 annually to process these applications. Mine operators spend approximately 1,400 hours annually preparing these applications.

Annual burden hours for mine opeator compliance will be reduced by approximately 1,025 hours, under this final rule. As a result of this reduction, costs to the government for processing applications will also be substantially reduced.

The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

List of Subjects in 30 CFR Parts 75 and 77

Mine safety and health, Qualified and certified persons, Coal mines.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Parts 75 and 77 Subchapter O, Chapter I of Title 30 of the Code of Federal Regulations are amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 75.100 paragraph (c) is revised to read as follows:

Subpart B—Qualified and Certified Persons

§ 75.100 Certified person.

* * * * *

(c)(1) The Secretary may certify persons in the categories of mine foreman, assistant mine foreman, and preshift examiner whenever the State in which persons are presently employed in these categories does not provide for such certification. A person's initial certification by MSHA is valid for as long as the person continues to satisfy the requirements necessary to obtain the certification and is employed at the same coal mine or by the same independent contractor. The mine operator or independent contractor shall make an application which satisfactorily shows that each such person has had at least 2 years underground experience in a coal mine, and has held the position of mine foreman, assistant mine foreman, or preshift examiner for a period of 6 months immediately preceding the filing of the application, and is qualified to test for methane and for oxygen deficiency. Applications for Secretarial certification should be submitted in writing to the Health and Safety Activity, Mine Safety and Health Administration, Certification and Qualification Center, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225.

(2) A person certified by the Secretary under this paragraph will be a certified person, within the meaning of the

provisions for Subpart D of this part and § 75.1106 referred to in paragraph (a) of this section, as long as that person continues to satisfy the requirements for qualification or certification and is employed at the same coal mine or by the same independent contractor.

* * * * *

3. Section 75.155 paragraphs (a)(2) and (b)(2) are revised to read as follows:

§ 75.155 Qualified hoisting engineer; qualifications.

(a) * * *

(2) If a State has no program for qualifying persons as steam-hoisting engineers, the Secretary may qualify persons for this purpose if the operator of the coal mine in which such persons are employed, or the independent contractor, makes an application and a satisfactory showing that each such person has had 1 year experience in operating steam-driven hoists and has held the position of hoisting engineer for a periond of 6 months immediately preceding the application. A person's qualification is valid for as long as this person continues to satisfy the requirements necessary for qualification and is employed at the same coal mine or by the same independent contractor.

(b) * * *

(2) If a State has no program for qualifying persons as electric-hoisting engineers, the Secretary may qualify persons for this purpose if the operator of the coal mine in which such persons are employed, or the independent contractor, makes an application and a satisfactory showing that each such person has had 1 year experience in operating electric-driven hoists and has held the position of hoisting engineer for a period of 6 months immediately preceding the application. A person's qualification is valid for as long as this person continues to satisfy the requirements for qualification and is employed at the same coal mine or by the same independent contractor.

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for Part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 77.100 paragraph (b)(2) is revised to read as follows:

Subpart B—Qualified and Certified Persons

§ 77.100 Certified person.

* * * * *

(b) * * *

(2) If this person has been certified for such purpose by the Secretary. A person's initial certification is valid for as long as the person continues to satisfy the requirements necessary to obtain the certification and is employed at the same coal mine or by the same independent contractor. The mine operator or independent contractor shall make an application which satisfactorily shows that each such person has had at least 2 years experience at a coal mine or equivalent experience, and that each such person demonstrates to the satisfaction of an authorized representative of the Secretary that such person is able and competent to test for oxygen deficiency with a permissible flame safety lamp, or any other device approved by the Secretary and to test for methane with a portable methane detector approved by the Bureau of Mines, MESA, or MSHA, under Part 22 of this Chapter (Bureau of Mines Schedule 8C), and to perform such other duties for which application for certification is made. Applications for certification by the Secretary should be submitted in writing to the Mine Safety and Health Administration, Certification and Qualification Center, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225.

* * * * *

3. Section 77.105 paragraph (a)(2) is revised to read as follows:

§ 77.105 Qualified hoistman; slope or shaft-sinking operation; qualifications.

(a) * * *

(2) If a State has no program for qualifying persons as hoistmen, the Secretary may qualify persons if the operator of the slope or shaft-sinking operation makes an application and a satisfactory showing that the person has had 1 year of experience operating hoists. A person's qualification is valid for as long as the person continues to satisfy the requirements for qualification and is employed at the same coal mine or by the same independent contractor.

[FR Doc. 89-16964 Filed 7-19-89; 8:45 am]
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30 CFR Part 77

RIN 1219-AA38

Mobile Equipment; Automatic Warning Devices

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the Mine Safety and Health Administration's (MSHA) existing safety rule requiring devices on mobile equipment at surface coal mines and surface work areas of underground coal mines to automatically sound an audible warning (backup alarm) when the equipment is operated in reverse. This final rule also clarifies MSHA's current policy that the standard does not apply to pickup trucks, provided that the driver of the vehicle has an unobstructed rear view. This final rule upgrades provisions consistent with advances in mining technology, and permits the use of strobe lights as an alternative to audible automatic warning devices when the equipment is operated at night. It also permits the use of infrared light, ultrasonic waves, radar, or other effective devices as an alternative to conventional backup alarms presently in use.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rule, 30 CFR 77.410, was promulgated on May 22, 1971 (36 FR 9364). It requires that mobile equipment, such as front-end loaders, forklifts, tractors, and graders be equipped with an automatic warning device which gives an audible (backup) alarm when the equipment is operated in reverse. The existing rule includes "trucks" but makes no mention of how the standard applies to pickup trucks. However, MSHA has consistently applied the backup alarm requirement to pickup trucks only when the operator has an obstructed rear view. The existing rule does not allow for alternative methods of achieving compliance using new technology.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12253) to revise and update MSHA's existing safety standard requiring devices on mobile equipment at surface coal mines and surface work areas of underground coal mines to automatically sound an audible warning when the equipment is put in reverse; to clarify the Agency's policy that the standard does not apply to pickup trucks, provided that the driver of the vehicle has an unobstructed rear view; to permit the use of strobe lights as an alternative to audible automatic warning devices when the equipment is operated at night; and to allow for

alternatives to the conventional backup alarms presently in use.

On August 11, 1988 (53 FR 30312), MSHA published a notice of public hearing which outlined major issues raised during the comment period. A public hearing was held on August 30, 1988 in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. This final rule was developed after a full evaluation of the rulemaking record.

II. Discussion and Summary of Final Rule

MSHA's review of the existing standards and comments received has resulted in revisions to reflect both the Agency's experience and the concerns of commenters. In developing this final rule, MSHA has been responsive, to the extent possible, to the comments received from the mining public. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act in that the final rule provides new compliance alternatives to accommodate advances in mining technology while offering effective protection for persons working at mines.

This final rule modifies the existing rule for backup alarms by allowing an exception for pickup trucks where the driver has an unobstructed rear view. MSHA has consistently applied the existing rule to large mobile equipment commonly used at mine sites. Most earth-moving haulage equipment used at coal mines has a large area to the rear of the equipment that cannot be seen from the equipment operator's position. A primary function of backup alarms is to compensate for this "blind spot" by warning persons who may be in that area that the operator is preparing to move the equipment in reverse. Normal operation of this equipment involves frequent backup maneuvers creating an environment in which the sound of backup alarms is regularly heard.

Unloaded pickup trucks have only a small area immediately behind the tailgate that cannot be seen from the driver's seat. Normally, pickup trucks are not operated in revese gear as part of the mining cycle as frequently as other mobile mining equipment. Under these conditions, MSHA's policy has consistently been to apply the backup alarm requirement to pickup trucks only when the driver has an obstructed rear view. This policy will continue to apply when an obstruction such as a large tool chest or other fixture is mounted on the pickup truck in a manner that blocks the driver's rear view. One commenter suggested that pickup trucks with an unobstructed rear view be excepted from the automatic warning device provisions only if they are equipped with functioning backup lights. MSHA's existing standard § 77.1605(d) requires that mobile equipment be provided with audible warning devices and that lights be provided on both ends when required.

One commenter objected to the exclusion of pickup trucks because at any given time, the view could become obstructed while the pickup is hauling supplies and parts. MSHA recognizes that this may occur; however, the mine operator is responsible for providing the unobstructed view to the rear or providing the backup alarm.

Under the existing rule, the warning device is required to give an audible alarm (backup alarm) when the equipment is operated in reverse. Several commenters suggested that the standard read "an automatic warning device which gives an audible alarm when the equipment is put in reverse and/or begins to move in the reverse direction". MSHA did not adopt the suggestion because it may not warn persons who may be in the area that the operator is preparing to move the equipment in reverse.

Another commenter reasoned that some equipment may move in a rearward direction while the shifting lever remains in a forward gear. MSHA believes that the equipment operator should maintain control of the equipment at all times. Intentional movement in a rearward direction with the transmission in neutral or a forward gear is generally considered as an unsafe practice.

Recent advances in backup alarm technology have resulted in the development of discriminating backup alarms, commonly referred to as proximity devices. These devices are an acceptable compliance alternative under this final rule provided that they offer sufficient coverage of the operator's obstructed view area to ensure that persons who enter the sensing area have adequate time to get out of the danger zone. These discriminating backup alarm systems use infrared light, ultrasonics or radar, and the alarm is activated only when a person or object is detected in the sensing area. These new systems feature an alarm that sounds both inside and outside the operator's compartment and only sounds when a hazard exists in the sensing area.

When deciding on whether to install either a conventional backup alarm or a discriminating backup alarm, mine operators and equipment manufacturers should evaluate the equipment size, speed and other operating parameters including noise in the surrounding area. Additional information on discriminating backup alarms is available from the U.S. Department of the Interior, Bureau of Mines, 2401 E Street NW., Washington, DC 20241 (see Technology News Bulletin No. 255, August 1986, and Information Circular No. 9079).

Workers exposed to the constant sounding of a conventional backup alarm system may become accustomed to the sound. Therefore, the sound can become less noticeable and effective as a warning. One of the principal advantages of the discriminating alarm is that this habituation is less likely to occur.

The conventional backup alarm gives an audible alarm outside of the compartment when the equipment is operated in reverse. This makes the persons in the danger zone solely responsible for getting out of the danger area. Another advantage of these new systems is that they feature an annunciator which gives an audible and visual alarm inside of the compartment and at least a one time audible alarm outside of the compartment. This causes both the operator and the person in the danger zone to be aware of the potential danger and to work cooperatively to avoid a collision. The annunciator can also serve as a fail-safe type system for the operator to know whether the unit is functioning.

Several commenters suggested that the proposal needed performance criteria to better define the conditions under which discriminating alarms would be an effective alternative. MSHA agrees and the final rule includes performance requirements addressing the detection zone, the audible alarm, and means to ensure that the device is working.

Some commenters questioned the reliability of the discriminating backup alarms in the day-to-day use, especially in wet and muddy conditions. MSHA recognizes that all equipment requires a measure of maintenance in order to perform within its design capabilities. The equipment should be checked frequently and on a regular basis to ensure the system works as designed.

The final rule requires the alarms to be maintained in functional condition.

Another commenter was concerned with the possibility of blasting caps being set off or detonated by the radio waves coming from a microwave unit. According to testimony and a publication by the Institute of Makers of Explosives (ANSI No. C95.4), there is virtually no chance of this ever occurring. MSHA recommends that discriminating backup alarm manufacturers consult the Institute of Makers of Explosives when developing their systems.

MSHA has received numerous petitions for modification of the audible backup alarm requirement from both coal and metal and nonmetal mining operations. The majority of these operations are located near residential areas and operate on multiple shifts, and have requested that they be allowed to use reverse-activated strobe lights in order to comply with local noise ordinances. Strobe lights are effective as warning devices at night. Therefore, paragraph (d) of the final rule permits the use of a strobe light instead of an audible alarm when mobile equipment is operated at night. One commenter, agreed that the use of strobe lights as backup warning devices could provide a valuable margin of protection, but also recommended that the strobe lights be a distinct color, easily distinguished from other strobe lights, capable of warning for at least 100 feet from the equipment and used in conjunction with an audible alarm. MSHA believes that strobe lights are effective warning devices instead of audible warning devices at night.

Although MSHA recommends the use of distinct color strobe lights to distinguish the backup strobe light from other strobe lights in use in the area, the Agency does not believe that such a distinction is always necessary and has not included this recommendation in the regulation. MSHA considers an effective strobe light to be one that can be seen from a reasonable distance.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking does not result in major cost increases or have an incremental effect of $100 million or more on the industry. Therefore, this final rule is not a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. The final rule incorporates alternatives to assist small mines. The Agency estimates that about 200 pieces of mobile surface mining equipment at small mines and 500 pieces at large mines annually would require installation or replacement of a backup warning device to maintain compliance with the existing and final rules. The annual cost for industry compliance, therefore, is $13,600 at small mines and $34,000 at large mines, totalling $47,600 industry wide. MSHA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain collection of information requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 77

Mine safety and health; Automatic warning devices; Mobile equipment.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: July 14, 1989.

Accordingly, Part 77, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 811 as follows:

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation to Part 77 is revised to read as follows:

Authority: 30 U.S.C. 811, 957 and 961.

2. Section 77.410 is revised to read as follows:

§ 77.410 Mobile equipment; automatic warning devices.

(a) Mobile equipment such as front-end loaders, forklifts, tractors, graders, and trucks, except pickup trucks with an unobstructed rear view, shall be equipped with a warning device that—

(1) Gives an audible alarm when the equipment is put in reverse; or

(2) Uses infrared light, ultrasonic waves, radar, or other effective devices to detect objects or persons at the rear of the equipment, and sounds an audible alarm when a person or object is detected. This type of discriminating warning device shall—

(i) Have a sensing area of a sufficient size that would allow endangered persons adequate time to get out of the danger zone.

(ii) Give audible and visual alarms inside the operator's compartment and a audible alarm outside of the operator's compartment when a person or object is detected in the sensing area; and

(iii) When the equipment is put in reverse, activate and give a one-time audible and visual alarm inside the operator's compartment and a one-time audible alarm outside the operator's compartment.

(b) Alarms shall be audible above the surrounding noise levels.

(c) Warning devices shall be maintained in functional condition.

(d) An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.

[FR Doc. 89-16965 Filed 7-19-89; 8:45 am]

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federal register

Thursday
July 20, 1989

Part V

Department of Labor

Pension and Welfare Benefits Administration

29 CFR 2550

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210-AA09

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) relating to loans from employee benefit plans to plan participants and beneficiaries who are parties in interest with respect to the plan. The regulation is intended to clarify the scope of section 408(b)(1) of the Act, and to define certain terms used therein. Section 408(b)(1) provides an exemption from certain prohibitions of section 406 of the Act for loans to plan participants and beneficiaries. The regulation will affect employee benefit plans, their sponsors and fiduciaries, and participants and beneficiaries engaging in such loan transactions.

EFFECTIVE DATE: The regulation will be effective for all participant loans granted or renewed after October 18, 1989, except that § 2550.408b–1(d)(2), which relates to the specific plan provisions requirement of section 408(b)(1)(C) of the Act, is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–9141; or Deborah S. Hobbs, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–8671. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 22, 1988, the Department of Labor published a proposed regulation at 53 FR 1798 which is intended to provide guidance on the scope of the statutory exemption under section 408(b)(1) of the Act, relating to loans from ERISA-covered employee benefit plans to plan participants and beneficiaries. The Department received over 200 comments in response to the proposal, and conducted a public hearing on the proposed regulation on April 25, 1988. The following discussion summarizes the proposed regulation and the major issues raised by the commentators and explains the Department's reasons for adopting the final regulation.

Background

Section 408(b)(1) of the Act provides a statutory exemption which permits a plan fiduciary within the meaning of 3(21)(A) of the Act to make loans from the plan to plan participants and beneficiaries. In the absence of an exemption, such transactions would be prohibited under section 406 of the Act. Specifically, section 406(a)(1)(B) prohibits a plan fiduciary from engaging in the direct or indirect lending of money to parties in interest to the plan such as themselves or other fiduciaries, plan participants, or employers whose employees are covered by the plan; section 406(b) also prohibits a plan fiduciary from engaging in transactions on behalf of the plan in which he has a conflict of interest. The final regulation 29 CFR 2550.408b–1 defines the scope of the exemption and the specific conditions contained therein.

Under section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the Secretary of Labor has the authority to promulgate regulations for section 4975(d)(1) of the Internal Revenue Code (the Code), a parallel provision to section 408(b)(1) of ERISA. Therefore, unless otherwise specified, all references herein to section 408(b)(1) of the Act apply also to section 4975(d)(1) of the Code.

Discussion

A. Scope of the Regulation

Proposed regulation paragraph 2550.408b–1(a)(1) set out the terms of section 408(b)(1) of the Act under which participant loans are permitted. Specifically, the proposed regulation stated that the relief provided under section 408(b)(1) is available if loans made by a plan to participants and beneficiaries who are parties in interest with respect to the plan (A) are available to all such participants and beneficiaries on a reasonably equivalent basis; (B) are not made available to highly compensated employees, officers, or shareholders [1] in an amount greater than the amount made available to other employees; (C) are made in accordance with specific provisions regarding such loans set forth in the plan; (D) bear a reasonable rate of interest; and (E) are adequately secured. The proposal made it clear that participant loan transactions that meet these criteria will not violate section 406(a) of the Act (which prohibits fiduciaries from engaging in certain transactions with parties in interest), section 406(b)(1) of the Act (which prohibits a fiduciary from dealing with plan assets in his own interest or for his own account) or section 406(b)(2) of the Act (which prohibits fiduciaries in their individual or in any other capacity from acting in any transaction involving the plan on behalf of, or representing a party whose interests are adverse to those of the plan, its participants, or its beneficiaries).

Proposed § 2550.408b–1(a) clarified that fiduciaries who are plan participants are permitted to receive loans under a participant loan program. Because the Department received no unfavorable comments on this paragraph, it has been adopted as proposed.

The Department notes, however, that the exemption encompasses certain transactions in which the potential for self-dealing by fiduciaries exists and in which the interests of fiduciaries may conflict with the interests of participants. To guard against potential abuses, the Department will subject loans to fiduciaries to special scrutiny to assure that the conditions of the regulation are met. In this regard, the regulation is designed to assure that participant loan programs are operated under strict objective criteria. Accordingly, the regulation specifically requires that a fiduciary may only receive a loan from a plan if: (1) The program is administered under strict objective criteria which assure the equitable availability of the assets committed to the program among qualified participants, and (2) the borrowing fiduciary does not receive more favorable consideration or terms than other plan participants requesting a loan. As did the proposal, the final regulation also states that section 408(b)(1) of the Act will not exempt transactions violating the provisions of section 406(b)(3) of the Act. Such a transaction is a separate transaction not covered by section 408(b)(1).

Proposed § 2550.408b–1(a)(3) made clear that a loan will not be exempt under section 408(b)(1) unless it is arranged and approved by the fiduciary administering the loan program

[1] Section 1114(b)(15)(B) of the Tax Reform Act of 1986 (Pub. L. 99–514) amended section 408(b)(1)(B) by deleting the phrase "highly compensated employees, officers, or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)." Thus, § 2550.408b–1(a)(1) contains a provision reflecting the statutory amendment.

primarily in the interest of the participants and such loan otherwise satisfies the conditions set forth in section 408(b)(1) of the Act. For example, the section 408(b)(1) exemption does not provide relief for loan programs which grant loans only to employees who agree to apply the loan proceeds for the benefit of some other party in interest, such as the employer. [2] However, in the absence of any inappropriate precondition or other facts and circumstances indicating that the loan program is not administered primarily for the benefit of the participants, the proposal contained no restrictions on the uses that plan participants may make of the loan proceeds. In this regard, one commentator urged that the regulation specifically prohibit participant loan proceeds being reloaned to the employer because of the great potential for coercion of employees without such a limitation.

While the Department acknowledges that a potential for employer coercion may exist under the proposed regulatory scheme, it believes that any benefit which might be gained by imposing a strict prohibition against the subsequent use by or transfer to a party in interest of a participant loan would be far outweighed by the practical problems such a prohibition would create for the fiduciary administering the loan program, *e.g.*, the monitoring by the administering fiduciary of the actual subsequent use of the proceeds of each loan by each participant.

As explained by Example (3) of § 2550.408b–1(a)(4), a loan program may meet all the conditions of section 408(b)(1) so that the loans will be exempt under that section, and yet if the employer exerts pressure on participants to borrow funds and reloan the proceeds to him, that coercion will be viewed by the Department as a separate transaction violative of Code section 4975(c)(1)(D) that is not exempt under ERISA section 408(b)(1) or Code section 4975(d)(1). As illustrated by that example, the employer would be liable for the excise taxes under Code section 4975. In this regard, the Department also notes that section 511 of ERISA makes it unlawful for a person to coerce a participant for the purpose of interfering with a right he has under a plan. In contrast, where a participant has taken out a plan loan and by exercising his unfettered discretion has transferred the proceeds to a party in interest, the final regulation, as did the proposal, contains no restrictions on the use of the loan proceeds.

In the event of a default on a participant loan, the preamble to the proposed regulation stated that the relief provided by section 408(b)(1) necessarily includes the foreclosure on, or sale or disposal of, a plan's security interest by a fiduciary. The Department stressed, however, that the section 408(b)(1) exemption does not extend to the sale or disposal of the security interest to a party in interest and further cautioned that, in circumstances other than default, the transfer of property by a party in interest in repayment of a participant loan will be viewed as a prohibited sale or exchange of property between a plan and a party in interest under section 406 of the Act.

One commentator queried why a sale of collateral on default to a party in interest must be prohibited. In response, the Department notes that Congress strictly delimited the exemptive relief provided by section 408(b)(1) to the otherwise prohibited transaction of a loan of plan assets from a plan to a party in interest who is either a participant or beneficiary of that plan. There is no evidence in either the statute or legislative history of a Congressional intent to exempt any other prohibited transaction—such as a sale of the plan security upon participant default to a party in interest—which may flow from, but is not a necessary result of, the loan transaction. It is the position of the Department that the sale of collateral upon default to a party in interest would constitute a separate prohibited transaction not described in section 408(b)(1).

As explained in the proposal, it is the Department's position that the exemption under section 408(b)(1) applies only to *bona fide* loans. If a loan is made with the understanding that the borrower has no intention to repay, the transaction would not be considered a participant loan for purposes of the relief provided by section 408(b)(1), but would merely constitute a transfer of plan assets to or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the Act and section 4975(c)(1)(D) of the Code. Whether any particular loan satisfies the requirements of section 408(b)(1) will be determined based on all the facts and circumstances of the transaction. [3] The Department received no substantive comments in this area, and, accordingly, the Department has retained its position as proposed.

Commentators also sought clarification as to the extent of fiduciary liability in administering a loan program with respect to both the general statutory requirement of diversification and the specific requirement of section 408(b)(1) that loans be made available on a reasonably equivalent basis. It was requested that the final regulation specifically limit the liability of all plan fiduciaries other than the fiduciary responsible for administering the loan program. In this regard, one commentator suggested that the regulation should be amended to clarify that the administration of a loan program is not a trustee responsibility under section 405(c)(3) of ERISA for the following reasons: (1) Participant loan programs are usually administered by a loan committee and not by the plan trustee(s), and (2) participant loans are regarded as an incidental plan benefit, and as such should not be considered as involving management of plan assets.

The Department notes that the exemption provided by 408(b)(1) provides relief from the prohibited transaction rule of section 406 of the Act but not the fiduciary responsibility rules set out in sections 404 and 405. In this regard, Congress stated that all statutory exemptions from the prohibited transaction rules are:

> To have no effect with respect to the basic fiduciary responsibility rules requiring prudent action, diversification of investments, and actions exclusively for the benefit of participants and beneficiaries, etc. [4]

Because the administration of a participant loan program is the management of plan assets, fiduciary conduct with respect to administration of a loan program must conform to the rules governing all other transactions involving plan assets, although plans are free to allocate fiduciary responsibility in this regard to the extent permitted by section 405(c) of the Act.

Lastly, the Tax Reform Act of 1986 amended section 408(d) of the Act to give the Department the authority to

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[2] Example (8) of § 2550.408b–1(a)(4) of the final regulation indicates, however, that a loan program will not fall outside the scope of the regulation merely because the program, by its express terms, limits loans to certain stated purposes, *e.g.*, hardship, medical or college education, which are not inconsistent with the interests of plan participants and beneficiaries. Any such limitation, however, must also meet the requirement of § 2550.408b–1(b)(1) that loans under the program be available to participants and beneficiaries on a reasonably equivalent basis.

[3] The Department does wish to note that, in its opinion, the fact of a subsequent default will not, in itself, cause the Department to treat the loan as one which was entered into with no intention to repay.

[4] H.R. Rep. No. 1280, 93rd Cong., 2d Sess. at 310–11 (1974) [hereinafter Conf. Rpt.], *reprinted in* Subcomm. on Labor, Senate Comm. on Labor and Pub. Welfare, Legislative History of the Employee Retirement Income Security Act of 1974, 4577–78 (Comm. Print 1976) [hereinafter Legis. Hist.].

grant administrative exemptions under section 408(a) to permit owner-employees to participate in participant loan programs. In this regard, several commentators suggested that the Department utilize its authority and grant a blanket exemption in this regulation from the prohibited transaction rules for owner-employees. The Department has determined that such an exemption is beyond the scope of this regulation, which relates solely to the statutory relief provided by section 408(b)(1). [5] However, consideration will be given to individual requests for relief in this area in accordance with established procedures. (See ERISA Proc. 75–1, 40 FR 18471, April 28, 1975). [6]

B. Reasonably Equivalent Basis

Under section 408(b)(1)(A) of the Act, the 408(b)(1) exemption applies only if the loans are available on a reasonably equivalent basis to all participants and beneficiaries of the plan. Consistent with the legislative history of this provision, proposed § 2550.408b–1(b) required that such loans be made available to all plan participants and beneficiaries without regard to an individual's race, color, religion, age, sex or national origin, while permitting a plan to consider factors which would be considered in a normal commercial setting by an entity in the business of making similar loans, *e.g.*, the applicant's creditworthiness.[7] Also consistent with the legislative history, the Department indicated that a plan could consider financial need in determining loan availability.[8]

Finally, the proposal stated that both the form and operation of the participant loan program will determine whether, in actual practice, loans are unreasonably withheld from any applicant. As the proposed examples (1) and (2) at § 2550.408b–1(b)(2) illustrated, the proposed regulation would prohibit the practice of applying different terms to different loan applicants, *e.g.*, offering lower interest rates to certain applicants without a commercial justification or informally restricting access to loans to certain participants. The proposal also indicated that under particular facts and circumstances, loan programs which have uniformly applied loan requirements but which in operation exclude large numbers of plan participants from receiving loans under the program may be found to have failed to make loans available to all participants on a reasonable equivalent basis. *See, e.g.*, § 2550.408b–1(a)(4), Example (8), and § 2550.408b–1(b)(2), Example (3).

The Department received a number of comments asking whether loan programs that exclude all but active employees from participation would be considered to be providing loans on a reasonably equivalent basis. In this regard, it is the position of the Department that such an exclusion is not justifiable because the statute provides, without condition, that section 408(b)(1) applies to loans that, *inter alia*, are available to *all* participants and beneficiaries on a reasonably equivalent basis. It should be noted, however, that these regulations are intended to be sufficiently flexible to accommodate differing treatment of loan applicants based on valid economic differences which may exist between active employees and other participants and beneficiaries and which commercial lenders in the business of making similar types of loans legally recognize for purposes of loan availability. Thus, participants and beneficiaries other than active employees may be offered loans on different terms and conditions where such terms and conditions are based solely on factors that are legally considered by commercial entities in the business of making similar loans.

Several commentators requested clarification concerning the reference in the proposed regulation to creditworthiness as the type of commercial factor that plans could consider in granting loans. These commentators expressed concern that § 2550.408b–1(b)(1)(ii) might be read as requiring plans to consider each applicant's creditworthiness in order to meet the requirements of the regulation. As a point of clarification, consideration may be given to individual creditworthiness if the plan is so designed; however, the final regulation does not require that a program be so designed. In this regard, the Department reiterates that the fiduciary administering the loan program must do so in such a way as to comport with the general fiduciary responsibilities of ERISA, *e.g.*, the provisions of section 404. Therefore, based on the facts and circumstances of any particular loan program, the administering fiduciary must decide what factors need to be taken into consideration in order to administer that particular program prudently.

Other commentators questioned whether minimum or maximum loan amounts, or required minimum account balances were permissible under this section. Commentators suggested that minimum loan amounts were necessary because of the administrative cost of processing loans, and many asked that the regulation provide a "safe harbor" minimum loan amount. One commentator questioned whether a plan could, consistent with the requirement that loans be available on a reasonably equivalent basis, charge fees for processing, and contract out and charge borrowers for loan administration. Several commentators queried whether loans are available on a reasonably equivalent basis where the loan program restricts accounts from which loans can be made.

None of these limitations and conditions necessarily contravene the conditions of section 408(b)(1) of the Act or the provisions of this regulation. Such limitations, however, would have to be examined to determine whether in practice (1) the limitation is the basis for loans being unreasonably withheld from any applicant, and (2) the loan program, through such limitation, excludes large numbers of plan participants from receiving loans under the program, thereby raising the issue of whether the program meets the requirement of section 408(b)(1)(B) of the Act and § 2550.408b–1(c) of the regulation.

In general, the Department does not believe that it is feasible to set a "safe harbor" with regard to permissible limitations in the areas mentioned above. However, based on the comments received and the testimony given concerning the proposal, it appears that many participant loan programs currently require a minimum loan amount due to administrative cost. Thus, in this regard, the Department has amended the regulation by adding § 2550.408b–1(b)(2) which provides that a participant loan program will not fail the requirements of §§ 2550.408b–1 (b)(1) or (c) if the program establishes a minimum loan amount of up to $1000, provided that the loans granted by the program meet the requirements of § 2550.408b–1(f) concerning adequate security.

C. Highly Compensated Employees

Section 408(b)(1)(B) states that the relief provided in section 408(b)(1) is available only if participant loans are not made available to highly compensated employees, officers, or

[5] The Department notes that section 408(d), while amended to permit exemptions under section 408(a), specifically provides that the statutory relief under 408(b)(1) is not available to owner-employees.

[6] On June 28, 1988, the Department proposed a new prohibited transaction exemption procedure which the Department intends to finalize in the immediate future. (53 FR 24422).

[7] Conf. Rpt., *supra* at 311, *reprinted in* Legis. Hist., *supra*, at 4578.

[8] *Id.*

shareholders [9] in an amount greater than the amount made available to other employees. With regard to this provision, the legislative history indicates a Congressional intent to allow plans to lend the same percentage of a person's vested benefits to participants with both large and small amounts of accrued vested benefits, or to lend the same dollar amounts if security other than the vested benefit is provided. *See* Conf. Rpt., *supra*, at 312; Legis. Hist., *supra*, at 4579. In light of the expressed Congressional intent, proposed § 2550.408b–1(c)(2) stated that a participant loan program would not fail to meet this requirement merely because the plan documents specifically governing the participant loan program set forth either (i) a maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed. If the second alternative (maximum percentage of vested accrued benefit) is chosen, the proposal explained that a loan program would not fail to meet this requirement solely because maximum loan amounts varied directly with the size of the participant's vested accrued benefit.[10] Section 2550.408b–1(c)(1) of the proposed regulation made it clear, however, that a loan program will satisfy the requirements of this paragraph if the program does not operate to exclude large numbers of plan participants from receiving loans.

The Department received no substantive comment on this paragraph, and thus, this paragraph is published in final as proposed. Numerous commentators did, however, request a Departmental view as to fiduciary liability, if any, in those cases where in order to comply with the Department's articulated requirements of adequate security and reasonable rate of interest, a loan program, in operation, excludes a large number of plan participants from receiving loans. In part, the Department believes that the concern of these commentators may be answered by the clarifications contained in this final regulation concerning the adequate security and reasonable rate of interest requirements. In addition, as evidenced by the legislative history, Congress clearly believed that loan programs could be conducted under the rules specified within section 408(b)(1), as well as the general ERISA fiduciary rules which govern other plan investments, and still operate in a non-discriminatory manner. Thus, by definition, loan programs which meet the requirements concerning reasonable rate of interest and adequate security will not be deemed discriminatory for purposes of the provisions of either section 408(b)(1) (A) or (B) of the Act solely by reason of compliance with the requirements of section 408(b)(1) (D) and (E) of the Act and the corresponding provisions of this regulation.

D. Specific Plan Provisions

Section 408(b)(1)(C) of the Act requires that participant loans be made in accordance with specific provisions regarding such loans set forth in the plan. Under the proposed regulation at § 2550.408b–1(d), all participant loan programs must be established pursuant to specific authority provided in a plan document. Additionally, a participant loan program which is contained in the plan or in a written document forming part of the plan must include, but need not be limited to, the following: (1) The identity of the person or positions authorized to administer the participant loan program; (2) a procedure for applying for loans; (3) the basis on which loans will be approved or denied; (4) limitations (if any) on the types and amounts of loans offered; (5) the procedure under the program for determining a reasonable rate of interest; (6) the types of collateral which may secure a participant loan; and (7) the events constituting default and the steps that will be taken to preserve plan assets in the event of such default. The proposal further specified that if a plan fails either to contain such specific provisions or to administer participant loans in accordance with a written program, loans made under such a program will fail to qualify for the relief extended in section 408(b)(1).

Under the proposed regulation, the specific terms enumerated above would apply to loans granted or renewed at any time on or after the last day of the first plan year beginning on or after January 1, 1989. Until that date, the Department will consider loans to satisfy the requirement of section 408(b)(1)(C) if the plan contains an explicit authorization for the establishment of a participant loan program. Example (1) of this paragraph also stated that the specific provisions describing the loan program, whether contained in the plan or in a written document forming part of the plan, affect the rights and obligations of the participants and beneficiaries under the plan and therefore must, in accordance with section 102(a)(1), be disclosed in the plan's summary plan description (SPD).

The Department received numerous comments seeking clarification as to what types of documents would satisfy the requirements of this subsection. Several commentators asked whether the SPD itself would be considered "a written document forming part of the plan" and, thus, satisfy the requirements of § 2550.408b–1(d) of this regulation. Others asked whether the regulation would require that the summary plan description disclose all specific plan loan provisions.

As indicated in Example (1) of § 2550.408b–1(d), the Department anticipates that the specific loan provisions under which the loan program is operated in many cases will not be contained in the plan itself but rather in a separate document forming part of the plan. The Department can find no reason to limit descriptively the range of documents which may form part of the plan. Thus, the Department sees no reason why an SPD could not satisfy the conditions of § 2550.408b–1(d) if it contains the required loan program provisions and is a document forming part of the plan. With regard to the extent to which loan program provisions must be disclosed in the SPD, the Department notes that section 102 of ERISA requires that the SPD be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan. In this regard, it is the opinion of the Department that satisfaction of the requirements of section 102 would, at a minimum, require summary disclosures with respect to those items listed in § 2550.408b–1(d)(2). [11]

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[9] See footnote 1 *infra*.

[10] The Department notes that the Internal Revenue Code (the Code) places a number of restrictions on participant loans for tax purposes. Under section 72(p) of the Code, a participant loan will be treated as a taxable distribution from the plan unless such loan does not exceed the lesser of: (i) $50,000 (which amount must be reduced by the outstanding balances for any previous participant loans from the plan in accordance with section 72(p)(2)(A)(i)); or (ii) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000). It is the view of the Department that a participant loan program administered pursuant to plan provisions which have been amended to preclude the making of loans which would be considered distributions under section 72(p) of the Code will not fail, by virtue of those provisions, to satisfy the condition in section 408(b)(1)(B) of the Act and § 2550.408b–1(c) of this regulation.

The Department also notes that a determination that a particular plan loan program meets the requirements of § 2550.408b–1(c) will not determine the status of that plan's loan program under Code section 401(a)(4).

[11] Depending on the facts and circumstances of any particular loan program, the list of items required by § 2550.408b–1(d) may not, alone, adequately describe the rights and obligations of participants of that plan, and, hence, additional information may be required.

The Department also received many comments arguing that the Department should require less detail in the plan documents because of the changing nature of loan programs and the expense of plan amendments. Several commentators opined that section 408(b)(1)(C) of the Act should not be read to require that such things as loan application procedures, interest rates and types of security be included.

In this regard, the Department reiterates that the specific terms enumerated in § 2550.408b–1(d)(2) may be included in a separate written document forming part of the plan. Also, it is the view of the Department that the requirements of this paragraph of the regulation are sufficiently general to permit plan provisions to be framed in a manner which would limit the number of plan amendments. For example, § 2550.408b–1(d)(2) does not require the inclusion in the plan of the actual rate of interest or the actual loan application form, but merely the general procedures for determining the interest rate and for applying for a loan.

A number of commentators indicated that sponsors of master and prototype plans would have difficulty complying with the requirements of § 2550.408b–1(d) of the regulation because these types of plans have no effective mechanism for setting forth the specific provisions required in the regulation. It was suggested that special guidance be developed for these plans and that, if necessary, a later effective date should be provided for amendments to such plans.

The Department believes that there is no basis in the statute to conclude that participants and beneficiaries of master or prototype plans are entitled to less specific disclosure of their rights and benefits under their plan than participants of other types of plans. Thus, the final regulation contains no special rules for these plans. Lastly, the Department believes that the grace period for compliance with this paragraph should be sufficient to accommodate the adoption of any necessary changes to master and prototype plans, as well as other types of plans.

E. Reasonable Rate of Interest

Section 408(b)(1)(D) of the Act states that, in order for a loan to be covered by the relief provided by section 408(b)(1), such loan must bear a reasonable rate of interest. In line with the Department's view that a participant loan is a plan investment, § 2550.408b–1(e) of the proposed regulation provided that a reasonable rate of interest is one which provides the plan with a return commensurate with the prevailing interest rate charged on similar commercial loans by persons in the business of lending money. This standard was first described in Advisory Opinion 81–12A[12] and reflects the relevant legislative history and the practice under the Internal Revenue Code prior to the enactment of ERISA.

In A.O. 81–12A, the Department expressed its view that Congress intended to incorporate into 408(b)(1) the objective prevailing rate standard under existing IRS regulations. The Department described the prevailing rate standard as a composite of what persons and institutions in the business of lending money would obtain as compensation for the use of money which they lend under similar circumstances. The Department noted that the prevailing rate standard permits a fiduciary to consider those factors pertaining to the opportunity for gain and the risk of loss that professional lenders would consider in setting the rate of interest on a similar arm's-length loan, and emphasized that a participant loan as a plan investment would not be prudent if it provided a plan with less return, relative to risk, than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department's approach was not followed in *Brock* v. *Walton* 794 F.2d 586 (11th Cir. 1986), where the Court of Appeals held that a rate 2⅛ percent lower than the prevailing rate in the community was neither imprudent under section 404(a)(1) of the Act nor unreasonable for purposes of 408(b)(1). After a careful review of the court's opinion, the Department issued the proposed regulation which adhered to the position that Congress intended participant loans to be treated as any other plan investment and, thus, governed by the objective prevailing rate standard.

Although several commentators agreed with the Department's position with respect to defined benefit plans, the Department received many comments arguing that less than commercial rates should be permitted for participant loan programs in individual account-type plans. In general, commentators disagreed both with the concept that participant loans are solely plan investments and with the position that for investment purposes prevailing commercial rates are the appropriate points of comparison. Many commentators argued that Congress did not intend that plans be required to charge the prevailing market rates of interest. Most in this group contended that the DOL should follow the *Brock* v. *Walton* rule that "reasonable rate" doesn't have to be prevailing market rate of interest.[13]

After due consideration of these comments, the Department continues to believe that the law of trusts establishes an objective standard of fiduciary conduct which has been incorporated by Congress in ERISA and applied in numerous cases thereunder. *See, e g., Donovan* v. *Cunningham*, 716 F.2d 1455, 1467–68 (5th Cir. 1983), *cert. denied*, 467 U.S. 1251 (1984); *Donovan* v. *Mazzola*, 716 F.2d 1226, 1231–32 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984); *Freund* v. *Marshall & Ilsley Bank*, 485 F. Supp. 629, 635 (W.D. Wisc. 1979). In addition, as noted in the preamble to the proposed regulation, the legislative history clearly indicates that in section 408(b)(1) Congress provided an exemption from the prohibited transaction rules for participant loans "following current practice." Conf. Rpt., *supra* at 310–11. In discussing the state of the law prior to the passage of ERISA, Congress noted:

> Under the Internal Revenue Code, qualified retirement plans must be for the exclusive benefit of the employees and their beneficiaries. Following this requirement, the Internal Revenue Service has developed general rules that govern the investment of plan assets including a requirement that cost must not exceed fair market value at the time of the purchase, *there must be a fair return commensurate with the prevailing rate*, sufficient liquidity must be maintained to permit distributions, and the safeguards and diversity that a prudent investor would adhere to must be present.

Id. at 302 (Emphasis added.) See 26 U.S.C. 503(b)(1) (1970), Treas. Reg. 26 CFR 1.503(b)–1(c) (1960). Further, although Congress clearly intended, through the enactment of section 408(b)(1) to permit certain parties in interest, i.e., plan participants, to engage in what would otherwise be prohibited

[12] Advisory Opinion 81–12A (letter to Robert Georgine, January 15, 1981) (A.O. 81–12A).

[13] In this regard, some commentators argued that the Department is required to follow *Brock* v. *Walton*, in part, because the Department did not seek review by the Supreme Court. To the contrary, the government is not bound to alter its national policy based on an adverse Court of Appeals decision. Such a rule would serve to prevent the development of important questions of law by giving the first decision preclusive effect on a particular issue. *United States* v. *Mendoza*, 464 U.S. 154, 160 (1984). In addition, the government is not required to seek Supreme Court review in order to preserve its position, particularly on the first adverse decision, in part because the Court's general practice is to review cases only after a conflict among the Circuits has developed. *See* S.Ct. Rule 17.1(a).

transactions involving plan assets, it is the opinion of the Department that Congress also clearly intended that the exemption would have no effect with respect to the requirements of the basic fiduciary responsibility rules. Conf. Rpt., *supra*, at 310–11; Legis. Hist., *supra*, at 4577–78. Based on the above, the Department issued A.O. 81–12A in which it concluded that both sections 404 and 408(b)(1) require participant loans to be treated as other plan investments, and that prevailing commercial loan rates are to be the appropriate benchmarks for determining a reasonable rate of interest. After careful review of the comments, the Department has determined to adhere to this longstanding interpretation.[14]

Other commentators stated that requiring the use of commercial rates is particularly inappropriate where a loan is in effect a self-directed investment, the investment experience of which is attributable only to the participant. In the Department's view, there is no basis in the statute for departing from the position that participant loans should function as plan investments, whether the investment return is used to provide benefits to one participant or to all covered participants. Moreover, it is the opinion of the Department that the primary purpose of a pension plan is to provide the benefit of retirement income not to make participant loans.[15]

[14] Many commentators also argued that under the "facts and circumstances" prudent person test of A.O. 81–12A, a below-prevailing rate of interest is permissible for participant loans which are both secured by participants' vested accrued benefits and repaid through payroll deduction. It is the Department's view that these factors may not be relied upon to justify the granting of loans at less than the prevailing rate. The Department does, however, wish to clarify that plan fiduciaries may choose a loan rate which reflects these factors, to the same extent that commercial loan rates would, and fall within the narrow range of the prevailing rate.

[15] In this regard, a number of commentators urged that all types of plans be permitted to use less than prevailing rates in recognition of the plan loan as an incidental benefit of, and in the case of some plans, incentive for, plan participation. In the Department's view, this suggestion is not compatible with the express intent of Congress that participant loans be governed by the general rules of fiduciary responsibility, which require that participant loans function as other plan investments. In addition, adopting the view that a participant loan is an incidental benefit would constitute a major departure from the purpose of pension plans—to provide retirement income. Also, in the case of plans in which individual benefits are based on the investment experience of the general pool of plan assets, such an approach may be unfair to those participants who do not take out loans. Lastly, the Department does not believe that the purpose of the exemption is to encourage borrowing from retirement plans but rather to permit it in circumstances that are not likely to either diminish the borrower's retirement income or cause loss to the plan.

Many commentators sought clarification on how to determine the rate of interest, and how often it should be adjusted. A majority of the commentators argued that ascertaining the prevailing market rate would be administratively infeasible, and that the Department should adopt a standard rate such as the applicable federal rate, a GIC rate, prime or prime plus rate, rates comparable to other plan returns, or state usury law rates. Other commentators argued that plans administered on a nationwide basis should not be required to charge different rates of interest in different locales.

Providing a standard "safe harbor" interest rate would not be compatible with the Department's view that a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. A Departmentally-established standard rate would also run counter to the Department's view of a participant loan as an investment subject to the same standards of ERISA as any other investment, *e.g.*, the prudence and exclusive benefit rules. Such a standard rate would also ignore the fact that the commercially prevailing rate may vary based on certain factors, *e.g.*, creditworthiness of the borrower and the security given for the loan. Indeed, the Department believes that no one particular standard rate will consistently reflect the appropriate risk relative to return ratio for all plans and all participant loans. Thus, with respect to setting loan rates, the Department suggests that plan administrators conduct the same type of inquiry that would be prudent prior to making any other type of investment.

With respect to geographical differences in the market rates, the Department believes that administrative costs may justify the adoption of a national rate of interest by a plan which is administered on a nationwide basis. Such a plan may also grant loans on a regional basis at rates which reflect appropriate regional factors. In the case of a plan which is not a plan administered on a nationwide basis, the Department believes that an appropriate determination of the "reasonable rate of interest" must be based on appropriate regional factors.

A number of commentators questioned Example (3) of proposed § 2550.408b–1(e) which states that a plan may not limit the rate of interest to the state usury limit if commercial institutions not subject to the usury laws are charging higher rates. According to these commentators, this places a plan sponsor in the untenable position of being forced to choose between complying with state usury laws or with the Department's regulation. In this regard, the Department notes that ERISA contains no mandate requiring ERISA-covered plans to provide loan programs for their participants; thus, there is no absolute conflict between state usury laws and ERISA. The Department continues to adhere to its position that a "reasonable rate of interest" is one which provides the plan with a return commensurate with the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances. Also, because participant loans are plan investments, a participant loan program which limits its interest rate to a maximum state usury ceiling when higher yielding comparable investment opportunities exist may not meet the requirements of ERISA section 403(c) and 404(a).

G. Adequate Security

Section 408(b)(1)(E) of the Act states that the relief provided by paragraph 408(b)(1) will apply only to loans that are adequately secured. Based on similar IRS regulations, the Department proposed § 2550.408b–1(f) which provided a test for the adequacy of the security similar to that which would be required by a commercial lender. The proposed regulation made it clear that in the participant loan context, the security must be such that, in the event of default, the participant's retirement income is preserved and loss to the plan is prevented. The proposal indicated that at least a portion of a participant's vested accrued benefit under the plan may be used as security to the extent that it meets this test. Citing to the spousal consent requirements of ERISA and the Code, the Department also suggested in the preamble to the proposed regulation that restrictions on distributions in qualified plans could affect the adequacy of vested accrued benefits as security.

Virtually all commentators on this paragraph of the regulation requested clarification that vested accrued benefits could serve as adequate security for participant loans. Most of these commentators made their arguments with respect to loan programs administered by individual account plans under which principal and interest payments made on any particular participant's loan would be allocated

totally to that same participant's account. Since in such plans any loss would be suffered only by the participant borrower, it was argued that the restrictions on timing of foreclosure due to the Code restrictions on in-service distributions should not affect the adequacy of accrued benefits as security. If such plans also require repayment by payroll deduction, it was argued that an account balance should be considered adequate security, at least in these types of plans, even though default could not occur until a distributable event, *i.e.*, termination of service. Other commentators suggested that vested accrued benefits in either a defined benefit or defined contribution plan could be considered adequate as security if its value was discounted to take into account any time lag between a default and actual enforcement of the security interest. Another commentator suggested that an employer's guarantee of participant loans should provide the Department a basis for determining that vested accrued benefits are adequate security.

In contrast, a number of commentators agreed that loans from defined benefit plans or other plans in which each participant's benefit is based on a share of the plan's pooled asset investment experience might require collateral beyond that required for loans from individual account plans in order to assure that the plan suffer no loss in the event of default.

In light of the comments, the Department has made the following amendments and clarifications to § 2550.408b–1(f). In the Department's view, Congress clearly intended that at least a portion of a participant's vested accrued benefit be a permissible form of security, *see, e.g.*, Conf. Rpt., *supra*, at 312; *reprinted in* Legis. Hist., *supra*, at 4579. But in that regard, Congress also clearly intended that the security given must be adequate in commercial terms. *Id.* Because of the overriding concern for protecting the plan from loss and thus preserving the participant's retirement income, the Department has determined to retain the general requirement that the security for all participant loans be such that the plan will suffer no loss of principal or income if a default occurs. However, with regard to plan loan programs which intend to accept a participant's vested accrued benefit as security, the Department has also established a cap which places an upper limit on the amount of the vested accrued benefit which the plan administrator may consider for purposes of determining adequate security for participant loans made pursuant to section 408(b)(1). Specifically, the final regulation permits up to fifty percent of the present value of a participant's vested accrued benefit to be used as security for participant loans and taken into account in determining whether the security is adequate, leaving the remaining account balance unencumbered.[16] Thus, immediately after the origination of any participant loan to be secured in whole or in part by the vested accrued benefit, the amount of the participant's vested accrued benefit actually being considered as security for the outstanding balance of that participant's loans may not exceed the 50% cap. A participant loan program may, however, grant participant loans which require aggregate security in excess of the fifty percent cap provided that the plan receives additional collateral the value of which equals or exceeds the amount required in excess of the cap. The Department believes this cap is necessary to assure that the primary purpose of a pension plan is achieved—to provide retirement income for plan participants.

Like the proposal, the final regulation does not require enforcement of the security interest held by a plan at any particular time after a default by a participant borrower. Section 2550.408b–1(f)(1), however, does require that in order for the security posted for the loan to be considered adequate, (1) the plan must have the ability to foreclose on, or sell, or otherwise dispose of it in the case of default; and (2) the value of the security must be such that it can be reasonably anticipated that the plan will not suffer a loss of principal or interest from the loan due to the actual date of enforcement of the security interest resulting from a default. The requirement that the plan have the ability to foreclose on the security interest in the case of default does not require that the plan have the ability to foreclose immediately upon default. For example, where a portion of the vested accrued benefit is used as security, the plan's ability to enforce the security interest immediately upon default is not required as long as no loss of principal or income will occur to the plan due to the delay of such enforcement. Similarly, in the case of collateral other than a participant's vested accrued benefit, the Department is of the opinion that it is within the plan fiduciary's discretion to determine whether it is prudent to extend the date of enforcement of the security interest, as long as no loss of principal or interest occurs.

For plans which accept a portion of the vested accrued benefit as security, the Department understands that the effect of the "no loss" requirement will vary depending upon the type of plan. With regard to plans in which the investment experience of the plan's assets is shared by all participants or used to fund the benefits of all plan participants, additional loan program requirements in conjunction with the pledging of a portion of the participant's vested accrued benefit may be necessary in order to assure "no loss" of principal and interest to the plan. For example, a loan program in a 401(k) plan in which the investment experience is shared might meet this "no loss" requirement by using a portion of a participant's account balance as security in conjunction with mandatory payroll deduction repayment which would stop only upon the happening of a distributable event, *i.e.*, retirement, separation from service or death. In addition, discounting the value of the vested accrued benefit to take into account the time delay between any possible default and the first distributable event for that participant's benefit may be another viable way of meeting the "no loss" adequate security requirement. ERISA's general fiduciary requirements may also require a plan administrator of a defined benefit plan who intends to use a portion of a participant's vested accrued benefit as security to consider additional factors such as the funding of the plan in determining the amount that may be borrowed based on the vested accrued benefit. However, where a plan provides an individual account for each participant and the investment experience of the assets contributed to that account is attributable solely to that plan participant's account, any participant who has a vested accrued benefit may borrow up to 50% of the present value of the vested accrued benefit secured by that 50% of the vested account balance. For example, a participant who has a vested accrued benefit the present value of which is $10,000 may borrow up to $5,000, secured by 50% of his vested account balance, *i.e.*, $5,000, and meet the terms of §§ 2550.408b–1(f) (1) and (2).

Finally, it was suggested that an employer guarantee of a participant loan might be a means of adequately securing the loan. In this regard, if requested, the Department will consider the issues surrounding this subject in the context

[16] The Department chose to correspond the cap to one of the upper limits imposed by section 72(p)(2)(A)(ii) of the Code, beyond which participant loans will be treated as taxable distributions. The Department wishes to note, however, that it is not adopting the provisions of section 72(p) as requirements of this regulatory exemption.

of specific guarantee arrangements submitted for review.

H. Effective Date

Proposed § 2550.408b–1(g) of the regulation stated that, if adopted, the regulation would generally be effective January 1, 1975, except that § 2550.408b–1(d)(2) relating to specific plan provisions would be effective for loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

Many of the comments received by the Department urged that all provisions of the regulations be made prospective in effect, contending that it would be unfair to issue retroactive regulations which are inconsistent with current practice both as to rates of interest and the security required, and which may impose substantial liability on plan fiduciaries and cause possible disqualification of plans. Other commentators suggested that the effective date be extended to include the time which plans will need to comply with the Tax Reform Act of 1986. One commentator stated that the retroactive effective date was reasonable except as applied to existing loans designed to be reloaned to the plan sponsor since, in the commentator's view, the Department has not definitively called this practice a prohibited transaction. Another commentator opined that the regulations should be prospective because plans are complying with state usury laws.

In support, commentators noted that the 1974 legislative history of ERISA gave permission to continue current practice which various commentators believed to include use of lower than prevailing rates of interest and use of distribution-restricted vested accrued benefits as security for loans. With respect to the proposed definition of reasonable rate of interest, many commentators stated that the proposed regulation is inconsistent with A.O. 81–12A, which commentators contend led plans to believe that using less than prevailing rates was permissible. Commentators also asserted that many plans reasonably relied upon the 1986 *Brock* v. *Walton* decision where the Eleventh Circuit approved a participant loan rate less than the prevailing rate. Some commentators suggested that a grace period be given plans so that they would have the opportunity to come into compliance with the regulation. Others suggested that existing plan loans be "grandfathered," *i.e.*, not be required to change their terms.

In response, the Department believes that the clarifications contained in this final regulation may alleviate some of the commentators' concern about the effective date of the regulation. It also believes, however, that many plans have in good faith attempted to follow the terms of the exemption but may not meet the precise terms contained in this final regulation. Section 2550.408b–1(g) has therefore been amended to provide that with the exception of the provisions of § 2550.408b–1(d)(2), the regulation will be effective for all new or renewed loans 90 days from the publication date of this final regulation.[17]

Executive Order 12291 Statement

The final rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action will impose some costs on employee benefit plans. These costs have been estimated to be one-time costs of just under $18 million and subsequent annual costs of less than $150,000.

Regulatory Flexibility Act Statement

The Department has determined that this final regulation would not have a significant economic impact on small entities. The purpose of this regulation is to provide guidance to employee benefit plans and their sponsors and administrators who wish to provide a participant loan program to their plan participants and beneficiaries. A number of commentators suggested that the Department had underestimated the cost of implementing a participant loan program under the regulation. In conducting the analysis required under the Regulatory Flexibility Act, it was determined that several aspects of the final regulation will serve to alleviate their concerns. First, many commentators projected higher costs based on misinterpretations of the proposed regulation's requirements under ERISA section 408(b)(1)(E), relating to adequate security.

Second, the Department anticipates that, given the nature of the requirements of ERISA section 408(b)(1) as clarified by the regulation, employee benefit service providers will be able to develop standardized language for inclusion in plan documents and summary plan descriptions, thereby reducing costs incurred by individual plan sponsors. Finally, it should be noted that no plan sponsor is required under section 408(b)(1) of ERISA, or the regulation, to provide for a loan program as part of a plan; thus, only those plan sponsors voluntarily adopting loan programs will be affected by the regulation.

Paperwork Reduction Act Statement

Section 2550.408b–1(d) of the final regulation contains a paperwork requirement which has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The final regulation is assigned control number 1210–0076.

Statutory Authority

The regulation set forth herein is issued pursuant to section 408(b)(1), 29 U.S.C. 1108(b)(1), and section 505, 29 U.S.C. 1135, of the Act. The regulation is also issued under section 102, Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR, 1978 Comp., 332, *reprinted in* 5 U.S.C. app. at 1163 (1982); and under Secretary of Labor Order No. 1–87.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefits Administration, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing, the Department amends Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for Part 2550 is revised to read as set forth below and

[17] The Department notes that making the regulation prospective in effect does not necessarily create an inference that all existing loan programs are *per se* acceptable. For instance, the Department may find that certain existing loan arrangements are non-exempt prohibited transactions, based not on the regulation, but on the Department's longstanding interpretation of the reasonable rate of interest requirement, as contained in A.O. 81–12A and as argued in *Brock* v. *Walton*, 794 F.2d 586 (11th Cir. 1986). Consequently, the Department will continue to bring enforcement actions aimed at participant loans made prior to the effective date of the regulation at below prevailing rates.

the authority citations following all the sections in Part 2550 are removed.

Authority: 29 U.S.C. 1135.

Section 2550.407c–3 also issued under 29 U.S.C. 1107.

Section 2550.408b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332, *reprinted in* 5 U.S.C. app. at 1163 (1982), and under 29 U.S.C. 1108(b)(1).

Section 2550.412–1 also issued under 29 U.S.C. 1112.

Section 2550.414b–1 also issued under 29 U.S.C. 1114.

Secretary of Labor Order No. 1–87.

2. Part 2550 is amended by adding a new § 2550.408b–1, entitled *General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan*, to read as follows:

§ 2550.408b–1 General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan.

(a)(1) *In general.* Section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA) exempts from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) loans by a plan to parties in interest who are participants or beneficiaries of the plan, provided that such loans:

(i) Are available to all such participants and beneficiaries on a reasonably equivalent basis;

(ii) Are not made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees;

(iii) Are made in accordance with specific provisions regarding such loans set forth in the plan;

(iv) Bear a reasonable rate of interest; and

(v) Are adequately secured.

The Internal Revenue Code (the Code) contains parallel provisions to section 408(b)(1) of the Act. Effective, December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. Therefore, all references herein to section 408(b)(1) of the Act should be read to include reference to the parallel provisions of section 4975(d)(1) of the Code.

Section 1114(b)(15)(B) of the Tax Reform Act of 1986 amended section 408(b)(1)(B) of ERISA by deleting the phrase "highly compensated employees, officers or shareholders" and substituting the phrase "highly compensated employees (within the meaning of section 414(q) of the Internal Revenue Code of 1986)." Thus, for plans with participant loan programs which are subject to the amended section 408(b)(1)(B), the requirements of this regulation should be read to conform with the amendment.

(2) *Scope.* Section 408(b)(1) of the Act does not contain an exemption from acts described in section 406(b)(3) of the Act (prohibiting fiduciaries from receiving consideration for their own personal account from any party dealing with a plan in connection with a transaction involving plan assets). If a loan from a plan to a participant who is a party in interest with respect to that plan involves an act described in section 406(b)(3), such an act constitutes a separate transaction which is not exempt under section 408(b)(1) of the Act. The provisions of section 408(b)(1) are further limited by section 408(d) of the Act (relating to transactions with owner-employees and related persons).

(3) *Loans.* (i) Section 408(b)(1) of the Act provides relief from the prohibitions of section 406(a), 406(b)(1) and 406(b)(2) for the making of a participant loan. The term "participant loan" refers to a loan which is arranged and approved by the fiduciary administering the loan program primarily in the interest of the participant and which otherwise satisfies the criteria set forth in section 408(b)(1) of the Act. The existence of a participant loan or participant loan program will be determined upon consideration of all relevant facts and circumstances. Thus, for example, the mere presence of a loan document appearing to satisfy the requirements of section 408(b)(1) will not be dispositive of whether a participant loan exists where the subsequent administration of the loan indicates that the parties to the loan agreement did not intend the loan to be repaid. Moreover, a loan program containing a precondition designed to benefit a party in interest (other than the participant) is not afforded relief by section 408(b)(1) or this regulation. In this regard, section 408(b)(1) recognizes that a program of participant loans, like other plan investments, must be prudently established and administered for the exclusive purpose of providing benefits to participants and beneficiaries of the plan.

(ii) For the purpose of this regulation, the term "loan" will include any renewal or modification of an existing loan agreement, provided that, at the time of each such renewal or modification, the requirements of section 408(b)(1) and this regulation are met.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(a).

Example (1): T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. As a result, T is a fiduciary with respect to P under section 3(21)(A) of the Act and a party in interest with respect to P pursuant to section 3(14)(A) of the Act. T is also a participant in P. Among T's duties as fiduciary is the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. Pursuant to strict objective criteria stated under the program, T, who participates in all loan decisions, receives a loan on the same terms as other participants. Although the exercise of T's discretion on behalf of himself may constitute an act of self-dealing described in section 406(b)(1), section 408(b)(1) provides an exemption from section 406(b)(1). As a result, the loan from P to T would be exempt under section 408(b)(1), provided the conditions of that section are otherwise satisfied.

Example (2): P is a plan covering all the employees of E, the employer who established and maintained P. F is a fiduciary with respect to P and an officer of E. The plan documents governing P give F the authority to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to an arrangement with E, F establishes such a program but limits the use of loan funds to investments in a limited partnership which is established and maintained by E as general partner. Under these facts, the loan program and any loans made pursuant to this program are outside the scope of relief provided by section 408(b)(1) because the loan program is designed to operate for the benefit of E. Under the circumstances described, the diversion of plan assets for E's benefit would also violate sections 403(c)(1) and 404(a) of the Act.

Example (3): Assume the same facts as in Example 2, above, except that F does not limit the use of loan funds. However, E pressures his employees to borrow funds under P's participant loan program and then reloan the loan proceeds to E. F, unaware of E's activities, arranges and approves the loans. If the loans meet all the conditions of section 408(b)(1), such loans will be exempt under that section. However, E's activities would cause the entire transaction to be viewed as an indirect transfer of plan assets between P and E, who is a party in interest with respect to P, but not the participant borrowing from P. By coercing the employees to engage in loan transactions for its benefit, E has engaged in separate transactions that are not exempt under section 408(b)(1). Accordingly, E would be liable for the payment of excise taxes under section 4975 of the Code.

Example (4): Assume the same facts as in Example 2, above, except that, in return for structuring and administering the loan program as indicated, E agrees to pay F an amount equal to 10 percent of the funds loaned under the program. Such a payment would result in a separate transaction not covered by section 408(b)(1). This transaction would be prohibited under section 406(b)(3) since F would be receiving consideration

from a party in connection with a transaction involving plan assets.

Example (5): F is a fiduciary with respect to plan P. D is a party in interest with respect to plan P. Section 406(a)(1)(B) of the Act would prohibit F from causing P to lend money to D. However, F enters into an agreement with Z, a plan participant, whereby F will cause P to make a participant loan to Z with the express understanding that Z will subsequently lend the loan proceeds to D. An examination of Z's credit standing indicates that he is not creditworthy and would not, under normal circumstances, receive a loan under the conditions established by the participant loan program. F's decision to approve the participant loan to Z on the basis of Z's prior agreement to lend the money to D violates the exclusive purpose requirements of sections 403(c) and 404(a). In effect, the entire transaction is viewed as an indirect transfer of plan assets between P and D, and not a loan to a participant exempt under section 408(b)(1). Z's lack of credit standing would also cause the transaction to fail under section 408(b)(1)(A) of the Act.

Example (6): F is a fiduciary with respect to Plan P. Z is a plan participant. Z and D are both parties in interest with respect to P. F approves a participant loan to Z in accordance with the conditions established under the participant loan program. Upon receipt of the loan, Z intends to lend the money to D. If F has approved this loan solely upon consideration of those factors which would be considered in a normal commercial setting by an entity in the business of making comparable loans, Z's subsequent use of the loan proceeds will not affect the determination of whether loans under P's program satisfy the conditions of section 408(b)(1).

Example (7): A is the trustee of a small individual account plan. D, the president of the plan sponsor, is also a participant in the plan. Pursuant to a participant loan program meeting the requirements of section 408(b)(1), D applies for a loan to be secured by a parcel of real property. D does not intend to repay the loan; rather, upon eventual default, he will permit the property to be foreclosed upon and transferred to the plan in discharge of his legal obligation to repay the loan. A, aware of D's intention, approves the loan. D fails to make two consecutive quarterly payments of principal and interest under the note evidencing the loan thereby placing the loan in default. The plan then acquires the real property upon foreclosure. Such facts and circumstances indicate that the payment of money from the plan to D was not a participant loan eligible for the relief afforded by section 408(b)(1). In effect, this transaction is a prohibited sale or exchange of property between a plan and a party in interest from the time D receives the money.

Example (8): Plan P establishes a participant loan program. All loans are subject to the condition that the borrowed funds must be used to finance home purchases. Interest rates on the loans are the same as those charged by a local savings and loan association under similar circumstances. A loan by P to a participant to finance a home purchase would be subject to the relief provided by section 408(b)(1) provided that the conditions of 408(b)(1) are met. A participant loan program which is established to make loans for certain stated purposes (e.g., hardship, college tuition, home purchases, etc.) but which is not otherwise designed to benefit parties in interest (other than plan participants) would not, in itself, cause such program to be ineligible for the relief provided by section 408(b)(1). However, fiduciaries are cautioned that operation of a loan program with limitations may result in loans not being made available to all participants and beneficiaries on a reasonably equivalent basis.

(b) *Reasonably Equivalent Basis.* (1) Loans will not be considered to have been made available to participants and beneficiaries on a reasonably equivalent basis unless:

(i) Such loans are available to all plan participants and beneficiaries without regard to any individual's race, color, religion, sex, age or national origin;

(ii) In making such loans, consideration has been given only to those factors which would be considered in a normal commercial setting by an entity in the business of making similar types of loans. Such factors may include the applicant's creditworthiness and financial need; and

(iii) An evaluation of all relevant facts and circumstances indicates that, in actual practice, loans are not unreasonably withheld from any applicant.

(2) A participant loan program will not fail the requirement of paragraph (b)(1) of this section or § 2550.408b–1(c) if the program establishes a minimum loan amount of up to $1,000, provided that the loans granted meet the requirements of § 2550.408b–1(f).

(3) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(b)(1):

Example (1): T, a trustee of plan P, has exclusive discretion over the management and disposition of plan assets. T's duties include the administration of a participant loan program which meets the requirements of section 408(b)(1) of the Act. T receives a participant loan at a lower interest rate than the rate made available to other plan participants of similar financial condition or creditworthiness with similar security. The loan by P to T would not be covered by the relief provided by section 408(b)(1) because loans under P's program are not available to all plan participants on a reasonably equivalent basis.

Example (2): Same facts as in example 1, except that T is a member of a committee of trustees responsible for approving participant loans. T pressures the committee to refuse loans to other qualified participants in order to assure that the assets allocated to the participant loan program would be available for a loan by P to T. The loan by P to T would not be covered by the relief provided by section 408(b)(1) since participant loans have not been made available to all participants and beneficiaries on a reasonably equivalent basis.

Example (3): T is the trustee of plan P, which covers the employees of E. A, B and C are employees of E, participants in P, and friends of T. The documents governing P provide that T, in his discretion, may establish a participant loan program meeting certain specified criteria. T institutes such a program and tells A, B and C of his decision. Before T is able to notify P's other participants and beneficiaries of the loan program, A, B, and C file loan applications which, if approved, will use up substantially all of the funds set aside for the loan program. Approval of these applications by T would represent facts and circumstances showing that loans under P's program are not available to all participants and beneficiaries on a reasonably equivalent basis.

(c) *Highly Compensated Employees.* (1) Loans will not be considered to be made available to highly compensated employees, officers or shareholders in an amount greater than the amount made available to other employees if, upon consideration of all relevant facts and circumstances, the program does not operate to exclude large numbers of plan participants from receiving loans under the program.

(2) A participant loan program will not fail to meet the requirement in paragraph (c)(1), of this section, merely because the plan documents specifically governing such loans set forth either (i) a maximum dollar limitation, or (ii) a maximum percentage of vested accrued benefit which no loan may exceed.

(3) If the second alternative in paragraph (c)(2) of this section (maximum percentage of vested accrued benefit) is chosen, a loan program will not fail to meet this requirement solely because maximum loan amounts will vary directly with the size of the participant's accrued benefit.

(4) *Examples.* The following examples illustrate the provisions of § 2550.408b–1(c).

Example (1): The documents governing plan P provide for the establishment of a participant loan program in which the amount of any loan under the program (when added to the outstanding balances of any other loans under the program to the same participant) does not exceed the lesser of (i) $50,000, or (ii) one-half of the present value of that participant's vested accrued benefit under the plan (but not less than $10,000). P's participant loan program does not fail to meet the requirement in section 408(b)(1)(B) of the Act, and would be covered by the relief provided by section 408(b)(1) if the other conditions of that section are met.

Example (2): The documents governing plan T provide for the establishment of a participant loan program in which the minimum loan amount would be $25,000. The documents also require that the only security

acceptable under the program would be the participant's vested accrued benefit. A, the plan fiduciary administering the loan program, finds that because of the restrictions in the plan documents only 20 percent of the plan participants, all of whom earn in excess of $75,000 a year, would meet the threshold qualifications for a loan. Most of these participants are high-level supervisors or corporate officers. Based on these facts, it appears that loans under the program would be made available to highly compensated employees in an amount greater than the amount made available to other employees. As a result, the loan program would fail to meet the requirement in section 408(b)(1)(B) of the Act and would not be covered by the relief provided in section 408(b)(1).

(d) *Specific Plan Provisions.* For the purpose of section 408(b)(1) and this regulation, the Department will consider that participant loans granted or renewed at any time prior to the last day of the first plan year beginning on or after January 1, 1989, are made in accordance with specific provisions regarding such loans set forth in the plan if:

(1) The plan provisions regarding such loans contain (at a minimum) an explicit authorization for the plan fiduciary responsible for investing plan assets to establish a participant loan program; and

(2) For participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989, the participant loan program which is contained in the plan or in a written document forming part of the plan includes, but need not be limited to, the following:

(i) The identity of the person or positions authorized to administer the participant loan program;

(ii) A procedure for applying for loans;

(iii) The basis on which loans will be approved or denied;

(iv) Limitations (if any) on the types and amount of loans offered;

(v) The procedure under the program for determining a reasonable rate of interest;

(vi) The types of collateral which may secure a participant loan; and

(vii) The events constituting default and the steps that will be taken to preserve plan assets in the event of such default.

Example (1): Plan P authorizes the trustee to establish a participant loan program in accordance with section 408(b)(1) of the Act. Pursuant to this explicit authority, the trustee establishes a written program which contains all of the information required by § 2550.408b–1(d)(2). Loans made pursuant to this authorization and the written loan program will not fail under section 408(b)(1)(C) of the Act merely because the specific provisions regarding such loans are contained in a separate document forming part of the plan. The specific provisions describing the loan program, whether contained in the plan or in a written document forming part of a plan, do affect the rights and obligations of the participants and beneficiaries under the plan and, therefore, must in accordance with section 102(a)(1) of the Act, be disclosed in the plan's summary plan description.

(e) *Reasonable Rate of Interest.* A loan will be considered to bear a reasonable rate of interest if such loan provides the plan with a return commensurate with the interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances.

Example (1): Plan P makes a participant loan to A at the fixed interest rate of 8% for 5 years. The trustees, prior to making the loan, contacted two local banks to determine under what terms the banks would make a similar loan taking into account A's creditworthiness and the collateral offered. One bank would charge a variable rate of 10% adjusted monthly for a similar loan. The other bank would charge a fixed rate of 12% under similar circumstances. Under these facts, the loan to A would not bear a reasonable rate of interest because the loan did not provide P with a return commensurate with interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. As a result, the loan would fail to meet the requirements of section 408(b)(1)(D) and would not be covered by the relief provided by section 408(b)(1) of the Act.

Example (2): Pursuant to the provisions of plan P's participant loan program, T, the trustee of P, approves a loan to M, a participant and party in interest with respect to P. At the time of execution, the loan meets all of the requirements of section 408(b)(1) of the Act. The loan agreement provides that at the end of two years M must pay the remaining balance in full or the parties may renew for an additional two year period. At the end of the initial two year period, the parties agree to renew the loan for an additional two years. At the time of renewal, however, A fails to adjust the interest rate charged on the loan in order to reflect current economic conditions. As a result, the interest rate on the renewal fails to provide a "reasonable rate of interest" as required by section 408(b)(1)(D) of the Act. Under such circumstances, the loan would not be exempt under section 408(b)(1) of the Act from the time of renewal.

Example (3): The documents governing plan P's participant loan program provide that loans must bear an interest rate no higher than the maximum interest rate permitted under State X's usury law. Pursuant to the loan program, P makes a participant loan to A, a plan participant, at a time when the interest rates charged by financial institutions in the community (not subject to the usury limit) for similar loans are higher than the usury limit. Under these circumstances, the loan would not bear a reasonable rate of interest because the loan does not provide P with a return commensurate with the interest rates charged by persons in the business of lending money under similar circumstances. In addition, participant loans that are artificially limited to the maximum usury ceiling then prevailing call into question the status of such loans under sections 403(c) and 404(a) where higher yielding comparable investment opportunities are available to the plan.

(f) *Adequate Security.* (1) A loan will be considered to be adequately secured if the security posted for such loan is something in addition to and supporting a promise to pay, which is so pledged to the plan that it may be sold, foreclosed upon, or otherwise disposed of upon default of repayment of the loan, the value and liquidity of which security is such that it may reasonably be anticipated that loss of principal or interest will not result from the loan. The adequacy of such security will be determined in light of the type and amount of security which would be required in the case of an otherwise identical transaction in a normal commercial setting between unrelated parties on arm's-length terms. A participant's vested accrued benefit under a plan may be used as security for a participant loan to the extent of the plan's ability to satisfy the participant's outstanding obligation in the event of default.

(2) For purposes of this paragraph, (i) no more than 50% of the present value of a participant's vested accrued benefit may be considered by a plan as security for the outstanding balance of all plan loans made to that participant; (ii) a plan will be in compliance with paragraph (f)(2)(i) of this section if, with respect to any participant, it meets the provisions of paragraph (f)(2)(i) of this section immediately after the origination of each participant loan secured in whole or in part by that participant's vested accrued benefit; and (iii) any loan secured in whole or in part by a portion of a participant's vested accrued benefit must also meet the requirements of paragraph (f)(1) of this section.

(g) *Effective date.* This section is effective for all participant loans granted or renewed after October 18, 1989, except with respect to paragraph (d)(2) of this section relating to specific plan provisions. Paragraph (d)(2) of this section is effective for participant loans granted or renewed on or after the last day of the first plan year beginning on or after January 1, 1989.

(Approved by the Office of Management and Budget under control number 1210–0076)

Signed this 14th day of July, 1989.

Ann L. Combs,

Deputy Assistant Secretary for Policy Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–16985 Filed 7–19–89; 8:45 am]

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federal register

Thursday
July 20, 1989

Part VI

Presidential Commission on Catastrophic Nuclear Accidents

Meeting

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

July 19, 1989.

AGENCY: The Presidential Commission on Catastrophic Nuclear Accidents.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the Presidential Commission on Catastrophic Nuclear Accidents announces a forthcoming meeting of the Commission.

DATE: July 26, 1989, 1:00 p.m. to 3:00 p.m.

ADDRESS: Longworth House Office Building, Room 1324, Independence Ave. SW., Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Steve C. Griffith, Jr. Chairman, The Presidential Commission on Catastrophic Nuclear Accidents, P.O. 33189, Charlotte, North Carolina 28242 (704/373–4380).

Type of Meeting: Open

Agenda:

1:00 p.m.–1:15 p.m.—Welcoming Remarks from Chairman

1:15 p.m.–2:00 p.m.—Swearing in of Commissioners

2:00 p.m.–3:00 p.m.—General Discussion on the study, scope, and schedule

3:00 p.m.—Adjourn

John J. Kearney,

Commissioner.

[FR Doc. 89–17262 Filed 7–19–89; 12:24 pm]

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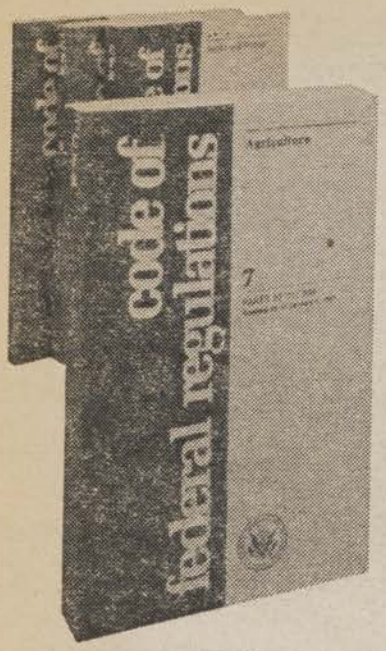

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